

CRIMES CODE (18 PA.C.S.) - CONFLICTS OF INTEREST AND PROVISIONS
RELATING TO INDEPENDENT COUNSEL

Act of Nov. 3, 2016, P.L. 1016, No. 131

Cl. 18

Session of 2016

No. 2016-131

HB 1118

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for conflicts of interest; and repealing and adding provisions relating to independent counsel.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 92

CONFLICTS OF INTEREST

Sec.

9201. Procedures.

§ 9201. Procedures.

If a district attorney requests that the Attorney General exercise the power to prosecute in a county criminal court or juvenile delinquency court under section 205(a)(3) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and the Attorney General declines to accept or act on the request, the following shall apply:

(1) The district attorney may refer the matter to a district attorney of a contiguous county who has sufficient resources and has no conflict of interest in representing the Commonwealth.

(2) If the district attorneys of the contiguous counties decline to accept the referral for any reason, the referring district attorney may refer the matter to a district attorney of a noncontiguous county.

(3) A district attorney who has accepted a case under paragraph (1) or (2) and a deputy or assistant district attorney on the district attorney's staff shall have the same authority to investigate and prosecute as the district attorney who referred the matter.

Section 2. Chapter 93 of Title 18 is repealed:

[CHAPTER 93

INDEPENDENT COUNSEL

Subchapter

- A. Preliminary Provisions
- B. General Provisions
- C. Authority and Duties of Independent Counsel
- D. Miscellaneous Provisions

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

9301. Short title of chapter.

9302. Definitions.

§ 9301. Short title of chapter.

This chapter shall be known and may be cited as the Independent Counsel Authorization Act.

§ 9302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"General Counsel." The General Counsel of the Commonwealth.

"Grounds to investigate." Information which would lead a reasonable person to suspect that a crime is being or has been committed.

"Independent counsel." A person appointed by the Special Independent Prosecutor's Panel upon the request of a special investigative counsel.

"Panel." The Special Independent Prosecutor's Panel established under this chapter.

"Special investigative counsel." A person appointed by the General Counsel to conduct a preliminary investigation under this chapter.

SUBCHAPTER B GENERAL PROVISIONS

Sec.

9311. Organization of panel.

9312. Preliminary investigation.

9313. Conduct of preliminary investigation.

9314. Determination that further investigation not warranted.

9315. Determination that further investigation is warranted.

9316. Contents of application.

9317. Disclosure of information.

9318. Limitation on judicial review.

9319. Duties of panel.

§ 9311. Organization of panel.

(a) Composition and selection.--The Special Independent Prosecutor's Panel shall be composed of one judge of the Commonwealth Court and two judges, including senior judges, of the courts of common pleas of the Commonwealth. The members of the panel shall be chosen by lot. The procedure shall be determined by and supervised by the Court Administrator of Pennsylvania in the Administrative Office of Pennsylvania Courts. The Administrative Office of Pennsylvania Courts shall disclose to the public the membership of the panel.

(b) Term of members.--Each member of the panel shall hold office for a term of three years. Judges who are members of the panel and are required to retire under section 16 of Article V of the Constitution of Pennsylvania shall also vacate their positions on the panel unless assigned under Chapter 7 of the Rules of Judicial Administration. A judge who is otherwise removed or suspended from office shall automatically forfeit the position held by that judge on the panel.

(c) Vacancies.--Any vacancy in the panel shall be filled only for the remainder of the three-year period in which the vacancy occurs and in the same manner as initial assignments to the panel were made.

(d) Decisions by majority vote.--All decisions of the panel shall be by majority vote of the members.

(e) Clerk.--The Prothonotary of Commonwealth Court shall serve as the clerk of the panel and shall provide such services as are needed by the panel.

(f) Restriction.--No member of the panel who participated in a function conferred on the panel under this chapter involving an independent counsel shall be eligible to participate in any judicial proceeding concerning a matter which involves the independent counsel and which involves the exercise of the independent counsel's official duties, regardless of whether the independent counsel is still serving in that office.

§ 9312. Preliminary investigation.

(a) Preliminary investigation with respect to certain covered persons.--The General Counsel shall appoint a special investigative counsel to conduct a preliminary investigation in accordance with this chapter whenever the General Counsel receives information sufficient to constitute grounds to investigate whether any person described in subsection (c) may have committed any of the following:

(1) An offense which is classified higher than a misdemeanor of the second degree.

(2) An offense which is classified higher than a summary offense and which involves a breach of the public trust. This paragraph includes a violation of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, or the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

(b) Preliminary investigation with respect to persons not listed in subsection (c).--The Attorney General shall request the General Counsel to appoint a special investigative counsel to conduct a preliminary investigation under the jurisdiction established or conferred under section 205(b) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and where the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Attorney General's office may result in a personal, financial or political conflict of interest. In addition, the Attorney General may request the General Counsel to appoint a special investigative counsel to conduct a preliminary investigation where the Attorney General determines that an investigation or prosecution of the person, with respect to the information received, by the Attorney General or other officer of the Attorney General's office may result in a personal, financial or political conflict of interest.

(c) Persons to whom subsection (a) applies.--The persons referred to in subsection (a) are as follows:

(1) The Attorney General, any Deputy Attorney General or any individual working in the Attorney General's office who is defined as a "public employee" under the Public Official and Employee Ethics Law.

(2) Any individual who leaves any office or position described in paragraph (1) during the incumbency of the Attorney General with or under whom such individual served in the office or position, plus one year after such incumbency, but in no event longer than a period of three years after the individual leaves the office or position.

(3) Any individual who held an office or position described in paragraph (1) during the incumbency of one Attorney General and who continued to hold the office or position for not more than 90 days into the term of the next Attorney General, during the one-year period after the individual leaves the office or position.

(4) The chairman and treasurer of the principal campaign committee seeking the election or reelection of the Attorney General, and any officer of that committee exercising authority at the State level, during the incumbency of the elected Attorney General.

(d) Examination of information to determine need for preliminary investigation.--In determining under subsection (a) whether grounds to investigate exist, the General Counsel shall consider only the specificity of the information received and the credibility of the source of the information. The General Counsel shall determine whether grounds to investigate exist

no later than 30 days after the information is first received. If within that 30-day period the General Counsel determines that the information is not specific or is not from a credible source, then the General Counsel shall close the matter. If within that 30-day period the General Counsel determines that the information is specific and from a credible source, the General Counsel shall, upon making that determination, appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If the General Counsel is unable to determine within that 30-day period whether the information is specific and from a credible source, the General Counsel shall at the end of that 30-day period appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If a special investigative counsel is appointed, the special investigative counsel may only accept the appointment when such appointment would not conflict with the rules governing professional conduct.

§ 9313. Conduct of preliminary investigation.

(a) In general.--A preliminary investigation conducted under this chapter shall be of matters as the special investigative counsel considers appropriate in order to make a determination under section 9314 (relating to determination that further investigation not warranted) or 9315 (relating to determination that further investigation is warranted) of whether further investigation is warranted with respect to each potential violation or allegation of a violation of criminal law. The special investigative counsel shall make the determination no later than 90 days after the preliminary investigation is commenced. The special investigative counsel shall promptly notify the panel of the date of the commencement of the preliminary investigation.

(b) Limited authority of special investigative counsel.--

(1) In conducting preliminary investigations under this chapter, the special investigative counsel shall have no authority to convene grand juries, plea bargain, grant immunity or issue subpoenas.

(2) The special investigative counsel shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that the person lacked the state of mind required for the violation of criminal law. The special investigative counsel shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted upon a determination that the person lacked the state of mind required for the violation of criminal law involved unless there is clear and convincing evidence that the person lacked the required state of mind.

(c) Extension of time for preliminary investigation.--The special investigative counsel may apply to the panel for a single extension, for a period of no more than 60 days, of the 90-day period referred to in subsection (a). The panel may, upon a showing of good cause, grant the extension.

§ 9314. Determination that further investigation not warranted.

(a) Notification of panel.--If the special investigative counsel upon completion of a preliminary investigation under this chapter determines that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel, and the panel shall have no power to appoint an independent counsel with respect to the matters involved.

(b) Form of notification.--The notification shall contain a summary of the information received and a summary of the results of the preliminary investigation. The summary shall be confidential and not subject to public disclosure, except that the person who was the subject of the investigation may request a copy of the summary from the panel.

§ 9315. Determination that further investigation is warranted.

(a) Application for appointment of independent counsel.--The special investigative counsel shall apply to the panel for the appointment of an independent counsel if:

(1) the special investigative counsel, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(2) the 90-day period referred to in section 9313(a) (relating to conduct of preliminary investigation) and any extension granted under section 9313(c) have elapsed and the special investigative counsel has not filed a notification with the panel under section 9314(a) (relating to determination that further investigation not warranted).

(b) Receipt of additional information.--If, after submitting a notification under section 9314(a), the special investigative counsel receives additional information sufficient to constitute grounds to investigate the matters to which the notification related, the special investigative counsel shall:

(1) Conduct an additional preliminary investigation as the special investigative counsel considers appropriate for a period of no more than 90 days after the date on which the additional information is received.

(2) Otherwise comply with the provisions of this subchapter with respect to the additional preliminary investigation to the same extent as any other preliminary investigation under this chapter.

§ 9316. Contents of application.

Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the panel in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

§ 9317. Disclosure of information.

Except as otherwise provided in this chapter, no officer or employee of the office of special investigative counsel or the office of independent counsel may, without leave of the panel, disclose to any individual outside the office of special investigative counsel or office of independent counsel any notification, application or any other document, material or memorandum supplied to the panel under this chapter. Nothing in this chapter shall be construed as authorizing the withholding of information from the General Assembly.

§ 9318. Limitation on judicial review.

The determination of the special investigative counsel under this chapter to apply to the panel for the appointment of an independent counsel shall not be reviewable in any court.

§ 9319. Duties of panel.

(a) Appointment and jurisdiction of independent counsel.--

(1) Upon receipt of an application, the panel shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction. The appointment shall occur no later than 30 days after the receipt of the application.

(2) The panel shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible and cost-effective manner. The panel shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The panel may not appoint as an independent counsel any person who holds any office of profit or trust with the Commonwealth. No person who is serving as a special investigative counsel may be appointed or serve as an independent counsel in the matter for which they had been appointed to investigate as special investigative counsel. If an independent counsel is appointed, the independent counsel may only accept the appointment when such appointment would not conflict with the rules governing professional conduct.

(3) In defining the independent counsel's prosecutorial jurisdiction, the panel shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the special investigative counsel has requested the appointment of the independent counsel and all matters related to that subject matter. Jurisdiction shall also include the authority to investigate and prosecute the following offenses which may arise out of the investigation with respect to which the special investigative counsel's request was made:

(i) An offense classified higher than a misdemeanor of the second degree.

(ii) An offense which is classified higher than a summary offense and which involves a breach of the public trust. This paragraph includes a violation of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, or the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law.

(4) The panel shall disclose the identity of the independent counsel upon appointment.

(b) Expansion of jurisdiction.--

(1) The panel upon the request of the General Counsel may expand the prosecutorial jurisdiction of an independent counsel. The expansion may be in lieu of the appointment of another independent counsel.

(2) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 9312 (relating to preliminary investigation) which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit the information to the General Counsel. In accordance with this subchapter, the General Counsel shall appoint a special investigative counsel to conduct a preliminary investigation of the information, except that the preliminary investigation shall not exceed 30 days from the date the information is received. In making the determinations required by this subchapter, the special investigative counsel shall give great weight to any recommendations of the independent counsel.

(3) If the special investigative counsel determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel, and the panel shall have no power to expand the

jurisdiction of the independent counsel or to appoint another independent counsel with respect to the matters involved.

(4) The panel shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate the matters if:

(i) the special investigative counsel determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in paragraph (2) elapses without a notification to the panel that no further investigation is warranted.

(5) If the independent counsel discovers or receives information about possible violations of criminal law by persons other than those provided for in section 9312 and which are not covered by the prosecutorial jurisdiction of the independent counsel and a request for expansion under this subsection has not been made by the General Counsel or the request for expansion under this subsection has been denied by the panel, the independent counsel shall submit the information to the appropriate law enforcement authority.

(c) Return for further explanation.--Upon receipt of a notification under this subchapter that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the panel shall have no authority to overrule this determination but may return the matter to the special investigative counsel for further explanation of the reasons for the determination.

(d) Vacancies.--If a vacancy in office arises by reason of the resignation, death or removal of an independent counsel, the panel shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death or removal caused the vacancy, except that, in the case of a vacancy arising by reason of the removal of an independent counsel, the panel may appoint an acting independent counsel to serve until any judicial review of the removal is completed.

SUBCHAPTER C

AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

Sec.

9331. Authorities.

9332. Compensation and travel expenses.

9333. Additional personnel.

9334. Assistance of Pennsylvania State Police.

9335. Referral of other matters to independent counsel.

9336. Dismissal of matters.

9337. Reports by independent counsel.

9338. Independence from Office of Attorney General.

9339. Standards of conduct applicable to independent counsel, persons serving in office of independent counsel and their law firms.

9340. Custody of records of independent counsel.

9341. Cost controls and administrative support.

9342. Legislative oversight.

9343. Removal of independent counsel and termination of office.

9344. Audits.

9345. Relationship with Office of Attorney General.

9346. Venue.

§ 9331. Authorities.

Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in the independent counsel's prosecutorial jurisdiction established under this chapter, full power and

independent authority to exercise all investigative and prosecutorial functions and powers of the Office of Attorney General, the Attorney General and any other officer or employee of the Office of Attorney General. Investigative and prosecutorial functions and powers shall include, but are not limited to:

(1) Conducting proceedings before grand juries and other investigations.

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary.

(3) Appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity.

(4) Reviewing all documentary evidence available from any source.

(5) Determining whether to contest the assertion of any testimonial privilege.

(6) Receiving appropriate security clearances and, if necessary, contesting in court, including, where appropriate, participating in an in camera proceeding, any claim of privilege or attempt to withhold evidence on grounds of security.

(7) Making applications to any State court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders and exercising the authority vested in the Attorney General or a district attorney.

(8) Inspecting, obtaining or using the original or a copy of any tax return in accordance with applicable statutes and regulations.

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information and handling all aspects of any case in the name of the Commonwealth.

(10) Consulting with the district attorney for the county in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

§ 9332. Compensation and travel expenses.

An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable to the Attorney General. An independent counsel and persons appointed under section 9333 (relating to additional personnel) shall be entitled to the payment of travel expenses.

§ 9333. Additional personnel.

For the purposes of carrying out the duties of the office of independent counsel, the independent counsel may appoint, fix the compensation and assign the duties of the employees the independent counsel considers necessary, including, but not limited to, investigators, attorneys and necessary experts to assist with the criminal investigation. The positions of these employees are exempted from the competitive service. Employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of Attorney General.

§ 9334. Assistance of Pennsylvania State Police.

(a) Carrying out functions.--An independent counsel may request assistance from the Pennsylvania State Police in carrying out the functions of the independent counsel, and the Pennsylvania State Police shall provide that assistance, which

may include the use of the resources and personnel necessary to perform the independent counsel's duties.

(b) Payment of and reports on expenditures of independent counsel.--Upon the request of the Governor, the General Assembly shall appropriate the necessary funds to the State Treasurer for the use and operation in executing the duties and responsibilities of the position of independent counsel. Upon the request of the Governor, the General Assembly shall appropriate the necessary funds to the Pennsylvania State Police for costs incurred when rendering assistance to the independent counsel as provided for under subsection (a). The State Treasurer shall submit to the General Assembly, no later than 30 days after the end of each fiscal year, a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by independent counsel. Each report shall include a statement of all payments made for activities of independent counsel.

§ 9335. Referral of other matters to independent counsel.

An independent counsel may ask the panel to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the panel may refer these matters. If the Attorney General refers a matter to an independent counsel on the Attorney General's own initiative, the independent counsel may accept the referral if the matter relates to the independent counsel's prosecutorial jurisdiction.

§ 9336. Dismissal of matters.

The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction without conducting an investigation or at any subsequent time before prosecution.

§ 9337. Reports by independent counsel.

(a) Required reports.--An independent counsel shall:

(1) File with the panel, with respect to the six-month period beginning on the date of his appointment and with respect to each six-month period thereafter until the office of that independent counsel terminates, a report which identifies and explains major expenses, summarizes all other expenses incurred by that office during the six-month period with respect to which the report is filed and estimates future expenses of that office.

(2) Before the termination of the independent counsel's office under section 9343(b) (relating to removal of independent counsel and termination of office), file a final report with the panel, setting forth fully and completely a description of all prosecutions. All other information shall be confidential and not subject to public disclosure.

(b) Disclosure of information in reports.--The panel may release to the General Assembly, the Governor, the State Treasurer, the public or any appropriate person the portions of a report made under this section as the panel considers appropriate. The panel shall make any orders as are appropriate to protect the rights of any individual named in the report and to prevent undue interference with any pending prosecution. The panel may make any portion of a final report filed under subsection (a)(2) available to any individual named in the report for the purposes of receiving within a time limit set by the panel any comments or factual information that the individual may submit. The comments and factual information, in whole or in part, may in the discretion of the panel be included as an appendix to the final report.

§ 9338. Independence from Office of Attorney General.

Each independent counsel appointed under this chapter and the persons appointed by that independent counsel under section 9333 (relating to additional personnel) are separate from and independent of the Office of Attorney General.

§ 9339. Standards of conduct applicable to independent counsel, persons serving in office of independent counsel and their law firms.

(a) Restrictions on employment while independent counsel and appointees are serving.--During the period in which an independent counsel is serving under this chapter, the independent counsel and any person associated with a firm with which the independent counsel is associated may not represent in any matter any person involved in any investigation or prosecution under this chapter. During the period in which any person appointed by an independent counsel under section 9333 (relating to additional personnel) is serving in the office of independent counsel, the person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(b) Postemployment restrictions on independent counsel and appointees.--

(1) Each independent counsel and each person appointed by that independent counsel under section 9333 may not for three years following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution conducted by that independent counsel under this chapter.

(2) Each independent counsel and each person appointed by that independent counsel under section 9333 may not for one year following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(c) One-year ban on representation by members of firms of independent counsel.--Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of service of that independent counsel under this chapter may not for one year following the termination represent any person in any matter involving any investigation or prosecution under this chapter.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Associated with a firm." A person who is an officer, director, partner or other member or employee of a law firm.

"Firm." A law firm, whether organized as a partnership or corporation.

§ 9340. Custody of records of independent counsel.

(a) Transfer of records.--Upon termination of the office of independent counsel, that independent counsel shall transfer to the Bureau of Archives and History of the Pennsylvania Historical and Museum Commission all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to the Pennsylvania Rules of Criminal Procedure as grand jury materials.

(b) Maintenance, use and disposal of records.--Records transferred to the Bureau of Archives and History under this section shall be maintained, used and disposed of as provided by law.

§ 9341. Cost controls and administrative support.

- (a) Cost controls.--An independent counsel shall:
- (1) Conduct all activities with due regard for expense.
 - (2) Authorize only reasonable and lawful expenditures.
 - (3) Promptly upon taking office assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(b) Office of Administration policies.--An independent counsel shall comply with the established policies of the Office of Administration of the Governor respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

§ 9342. Legislative oversight.

(a) Oversight of conduct of independent counsel.--An independent counsel appointed under this chapter shall submit to the General Assembly a report detailing all moneys expended as required under section 9337(a)(1) (relating to reports by independent counsel). In addition, the independent counsel shall submit annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. The report may omit any matter that in the judgment of the independent counsel should be kept confidential but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) Information relating to impeachment.--An independent counsel shall advise the House of Representatives of any substantial and credible information which the independent counsel receives in carrying out the independent counsel's responsibilities under this chapter that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the General Assembly or either house thereof from obtaining information in the course of an impeachment proceeding.

§ 9343. Removal of independent counsel and termination of office.

- (a) Removal, report on removal and termination.--

(1) An independent counsel appointed under this chapter may be removed from office only by the personal action of the General Counsel and only for good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of the independent counsel's duties. For purposes of this paragraph, the term "good cause" includes, but is not limited to, violations of any ethical rules governing the independent counsel, the Attorney General or district attorneys.

(2) If an independent counsel is removed from office, the General Counsel shall promptly submit to the panel, the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees may make available to the public the report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The panel may release any or all of the report in accordance with section 9337(b) (relating to reports by independent counsel).

(3) An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the Commonwealth Court. The independent counsel may be reinstated or granted other appropriate relief by

order of the Commonwealth Court. A member of the panel may not hear or determine any such civil action or any appeal of a decision in any such civil action.

(b) Termination of office.--

(1) An office of independent counsel shall terminate when the independent counsel:

(i) notifies the panel that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel, and any resulting prosecutions, have been completed; and

(ii) files a final report in compliance with section 9337.

(2) The panel shall determine on its own motion whether termination is appropriate under this subsection no later than two years after the appointment of an independent counsel or the reported expenditures of the independent counsel have reached \$2,000,000, whichever occurs first, and at the end of each succeeding one-year period.

§ 9344. Audits.

By December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding June 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures within 90 days of the date on which the office is terminated. The Auditor General shall audit each statement and report the results of each audit to the appropriate committees of the General Assembly no later than March 31 of the year following the submission of the statement.

§ 9345. Relationship with Office of Attorney General.

Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 9335 (relating to referral of other matters to independent counsel), the Office of Attorney General, the Attorney General, all other officers and employees of the Office of Attorney General and any district attorney shall suspend all investigations and proceedings regarding that matter and shall turn over to the independent counsel all materials, files and other data relating to that matter.

§ 9346. Venue.

The proper venue for all prosecutions conducted by the independent counsel shall be determined in accordance with the Pennsylvania Rules of Criminal Procedure. For the purposes of convenience and fairness, the panel may, however, set the venue in any other county on its own motion or at the request of the independent counsel or on petition of the defendant.

SUBCHAPTER D

MISCELLANEOUS PROVISIONS

Sec.

9351. Severability of chapter.

9352. Expiration of chapter.

§ 9351. Severability of chapter.

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

§ 9352. Expiration of chapter.

This chapter shall expire five years after the date of the enactment of this chapter, except with respect to any matters pending before an independent counsel that in the judgment of

the independent counsel require continuation. Matters shall be continued until the independent counsel determines the matters are completed.]

Section 3. Title 18 is amended by adding a chapter to read:

CHAPTER 95
INDEPENDENT COUNSEL

Subchapter

- A. Preliminary Provisions
- B. General Provisions
- C. Authority and Duties of Independent Counsel

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

9501. Scope of chapter.

9502. Definitions.

9503. Administrative expenses.

§ 9501. Scope of chapter.

This chapter relates to independent counsel authorization.

§ 9502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Grounds to investigate." Information which would lead a reasonable person to suspect that a crime is being or has been committed.

"Independent counsel." A person appointed by the panel upon the request of a special investigative counsel.

"Panel." The Special Independent Prosecutor's Panel established under this chapter.

"Requesting judge." A president judge of a court of common pleas, or a judge of an intermediate court sitting in the court's original jurisdiction, who applies for the appointment of a special investigative counsel to investigate a contempt of court.

"Special investigative counsel." A person appointed by the panel to conduct a preliminary investigation under this chapter.

§ 9503. Administrative expenses.

All expenses attributable to the appointment of either a special investigative counsel or an independent counsel shall be paid from the annual appropriation for the Office of Attorney General's general government operations.

SUBCHAPTER B
GENERAL PROVISIONS

Sec.

9511. Organization of panel.

9512. Preliminary investigation.

9513. Conduct of preliminary investigation.

9514. Determination that further investigation not warranted.

9515. Determination that further investigation is warranted.

9516. Contents of application.

9517. Duties of panel.

9518. Disclosure of information.

§ 9511. Organization of panel.

(a) Composition and selection.--The Special Independent Prosecutor's Panel shall be composed of one judge of the Superior Court and two judges, which may include senior judges, of the courts of common pleas of the Commonwealth. The members of the panel shall be chosen by lot. The procedure shall be determined and supervised by the Court Administrator of Pennsylvania in the Administrative Office of Pennsylvania Courts. The Administrative Office of Pennsylvania Courts shall disclose to the public the membership of the panel and publish

the membership on its publicly accessible Internet website and in the Pennsylvania Bulletin.

(b) Term of members.--Each member of the panel shall hold office for a term of three years. Judges who are members of the panel and are required to retire under section 16 of Article V of the Constitution of Pennsylvania shall also vacate their positions on the panel unless assigned under Pa.R.J.A. No. 701 (relating to assignment of judges to courts), No. 702 (relating to divisional assignments of judges), No. 703 (relating to reports of judges), No. 704 (relating to judicial leave), No. 705 (relating to seniority of judges) or No. 706 (relating to determination or selection of Chief Justice and president and administrative judges). A judge who is otherwise removed or suspended from office shall automatically forfeit the position held by that judge on the panel.

(c) Vacancies.--Any vacancy on the panel shall be filled only for the remainder of the three-year period in which the vacancy occurs and in the same manner as initial assignments to the panel were made.

(d) Decisions by majority vote.--All decisions of the panel shall be by majority vote of the members.

(e) Clerk.--The Prothonotary of the Superior Court shall serve as the clerk of the panel and shall provide services as are needed by the panel.

(f) Restriction.--A member of the panel who participated in a function conferred on the panel under this chapter involving an independent counsel shall not be eligible to participate in any judicial or disciplinary proceeding concerning a matter which involves the independent counsel and which involves the exercise of the independent counsel's official duties, notwithstanding whether the independent counsel is still serving in that office.

§ 9512. Preliminary investigation.

(a) Covered persons.--The panel, upon the petition of a district attorney, shall appoint a special investigative counsel to conduct a preliminary investigation in accordance with this chapter whenever the panel receives information from a district attorney sufficient to constitute grounds to investigate whether any person described in subsection (b) may have committed an offense which is classified higher than a summary offense in the district attorney's county. If a district attorney receives information that any person described in subsection (b) may have committed an offense which is classified higher than a summary offense in a county other than the district attorney's county, the district attorney shall refer the information to the district attorney of that county.

(a.1) Special investigative counsel.--The panel, upon the petition of the requesting judge, shall appoint a special investigative counsel to conduct a preliminary investigation in accordance with this chapter whenever the panel receives information from a requesting judge sufficient to constitute grounds to investigate criminal contempt of court as described in subsection (d).

(b) Applicability.--The persons referred to in subsection (a) shall be as follows:

(1) The Attorney General.

(1.1) A deputy Attorney General or an individual working in the Office of Attorney General who is defined as a "public employee" under 65 Pa.C.S. § 1102 (relating to definitions) acting in concert with the Attorney General to commit an offense which is classified higher than a summary offense.

(2) Any individual who leaves any office or position described in paragraph (1) or (1.1) during the incumbency of the Attorney General with or under whom the individual served in the office or position, plus one year after the incumbency, but not longer than a period of three years after the individual leaves the office or position. This paragraph shall only apply to an individual described in paragraph (1.1) who may have acted in concert with an individual described in paragraph (1) to commit an offense which is classified higher than a summary offense.

(3) Any individual who held an office or position described in paragraph (1) or (1.1) during the incumbency of one Attorney General and who continued to hold the office or position for not more than 90 days into the term of the next Attorney General, during the one-year period after the individual leaves the office or position. This paragraph shall only apply to an individual described in paragraph (1.1) who may have acted in concert with an individual described in paragraph (1) to commit an offense which is classified higher than a summary offense.

(4) The chairman and treasurer of the principal campaign committee seeking the election or reelection of the Attorney General, and any officer of that committee exercising authority at the State level, during the incumbency of the elected Attorney General. This paragraph shall only apply to an individual described in paragraph (1.1) who may have acted in concert with an individual described in paragraph (1) to commit an offense which is classified higher than a summary offense.

(b.1) Petition for special investigative counsel.--A district attorney, at his or her discretion, may petition the panel to appoint special investigative counsel, if the district attorney with appropriate jurisdiction receives information that any person described in subsection (b)(1.1), (2), (3) or (4) may have committed an offense which is classified higher than a summary offense regardless of whether or not the individual acted in concert with a person described in subsection (b)(1).

(c) Examination of information to determine need for preliminary investigation.--In determining under subsection (a) whether grounds to investigate exist, a district attorney shall consider only the specificity of the information received and the credibility of the source of the information. A district attorney shall determine whether grounds to investigate exist no later than 90 days after the information is first received. If within that 90-day period a district attorney determines that the information is not specific or is not from a credible source, then a district attorney shall close the matter. If within that 90-day period a district attorney determines that the information is specific and from a credible source, the district attorney shall, upon making that determination, petition the panel to appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If a district attorney is unable to determine within that 90-day period whether the information is specific and from a credible source, the district attorney shall at the end of that 90-day period petition the panel to appoint a special investigative counsel to commence a preliminary investigation with respect to that information. If a special investigative counsel is appointed, the special investigative counsel may only accept the appointment when the appointment

would not conflict with the rules governing professional conduct.

(d) Requesting judge's application.--A requesting judge, on his own or at the request of another judge, may apply to the panel for appointment of a special investigative counsel upon a certification that there are reasonable grounds to believe that:

- (1) there has been a criminal contempt of court;
- (2) investigation by a prosecutor may be necessary to address a breach in the sanctity of court proceedings; and
- (3) the prosecutor with statutory authority to conduct the investigation has or is likely to have a conflict of interest.

(e) Compensation.--A special investigative counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable to the Attorney General. A special investigative counsel shall be entitled to the payment of travel expenses.

§ 9513. Conduct of preliminary investigation.

(a) In general.--A preliminary investigation conducted under this chapter shall be of matters as the special investigative counsel considers appropriate in order to make a determination under section 9514 (relating to determination that further investigation not warranted) or 9515 (relating to determination that further investigation is warranted) of whether further investigation is warranted with respect to each potential violation or allegation of a violation of criminal law. The special investigative counsel shall make the determination no later than 90 days after the preliminary investigation is commenced. The special investigative counsel shall promptly notify the panel of the date of the commencement of the preliminary investigation.

(b) Limited authority of special investigative counsel.--

(1) In conducting preliminary investigations under this chapter, the special investigative counsel shall have no authority to convene grand juries, plea bargain, grant immunity or issue subpoenas.

(2) The special investigative counsel shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that the person lacked the state of mind required for the violation of criminal law. The special investigative counsel shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted upon a determination that the person lacked the state of mind required for the violation of criminal law involved unless there is clear and convincing evidence that the person lacked the required state of mind.

(c) Extension of time for preliminary investigation.--The special investigative counsel may apply to the panel for a single extension, for a period of no more than 60 days, of the 90-day period referred to in subsection (a). The panel may, upon a showing of good cause, grant the extension.

§ 9514. Determination that further investigation not warranted.

(a) Notification of panel.--If the special investigative counsel, upon completion of a preliminary investigation under this chapter, determines that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly so notify the panel.

(b) Form of notification.--The notification shall contain a summary of the information received, a summary of the results

of the preliminary investigation and all materials collected as part of the preliminary investigation. The summaries shall be confidential and not subject to public disclosure. The summaries shall be considered an exception for the purposes of section 708(b)(16) of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

§ 9515. Determination that further investigation is warranted.

(a) Application for appointment of independent counsel.--The special investigative counsel shall apply to the panel for the appointment of an independent counsel if the special investigative counsel, upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted.

(a.1) Review by panel.--The panel shall review and consider appointing independent counsel if the 90-day period referred to in section 9513(a) (relating to conduct of preliminary investigation) and any extension granted under section 9513(c) have elapsed and the special investigative counsel has not filed a notification with the panel under section 9514(a) (relating to determination that further investigation not warranted).

(b) Receipt of additional information.--If, after submitting a notification under section 9514(a), the special investigative counsel receives additional information sufficient to constitute grounds to investigate the matters to which the notification related, the special investigative counsel shall:

(1) Conduct an additional preliminary investigation as the special investigative counsel considers appropriate for a period of no more than 90 days after the date on which the additional information is received.

(2) Otherwise comply with the provisions of this subchapter with respect to the additional preliminary investigation to the same extent as any other preliminary investigation under this chapter.

§ 9516. Contents of application.

Any application for the appointment of an independent counsel under this chapter shall contain sufficient information to assist the panel in selecting an independent counsel and in defining that independent counsel's prosecutorial jurisdiction so that the independent counsel has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

§ 9517. Duties of panel.

(a) Appointment and jurisdiction of independent counsel.--

(1) Upon receipt of an application, the panel shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction. The appointment shall occur no later than 30 days after the receipt of the application.

(2) The panel shall appoint as independent counsel an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible and cost-effective manner. The panel shall seek to appoint as independent counsel an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay. The panel may not appoint as an independent counsel any person who holds any office of profit or trust with the Commonwealth. A person who is serving as a special investigative counsel may not be appointed or serve as an independent counsel in the matter for which the person had been appointed to investigate as special investigative counsel. If an independent counsel is

appointed, the independent counsel may only accept the appointment when the appointment would not conflict with the rules governing professional conduct.

(3) In defining the independent counsel's prosecutorial jurisdiction, the panel shall assure that the independent counsel has adequate authority to fully investigate and prosecute the subject matter with respect to which the special investigative counsel has requested the appointment of the independent counsel and all matters related to that subject matter. Jurisdiction shall also include the authority to investigate and prosecute an offense classified higher than a summary offense or a contempt of court which may arise out of the investigation with respect to which the special investigative counsel's request was made.

(4) The panel shall disclose the identity of the independent counsel upon appointment.

(b) Expansion of jurisdiction.--

(1) The panel upon the request of a district attorney or a requesting judge may expand the prosecutorial jurisdiction of an independent counsel. The expansion may be in lieu of the appointment of another independent counsel.

(2) If the independent counsel discovers or receives information about possible violations of criminal law by persons as provided in section 9512 (relating to preliminary investigation) which are not covered by the prosecutorial jurisdiction of the independent counsel, the independent counsel may submit the information to a district attorney. In accordance with this subchapter, a district attorney shall petition the panel to appoint a special investigative counsel to conduct a preliminary investigation of the information, except that the preliminary investigation shall not exceed 30 days from the date the information is received. In making the determinations required by this subchapter, the special investigative counsel shall give great weight to any recommendations of the independent counsel.

(3) If the special investigative counsel determines, after according great weight to the recommendations of the independent counsel, that there are no reasonable grounds to believe that further investigation is warranted, the special investigative counsel shall promptly notify the panel.

(4) The panel shall expand the jurisdiction of the appropriate independent counsel to include the matters involved or shall appoint another independent counsel to investigate the matters if:

(i) the special investigative counsel determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in paragraph (2) elapses without a notification to the panel that no further investigation is warranted.

(5) If the independent counsel discovers or receives information about possible violations of criminal law by persons other than those provided for in section 9512 and which are not covered by the prosecutorial jurisdiction of the independent counsel and a request for expansion under this subsection has not been made by a district attorney or a requesting judge or the request for expansion under this subsection has been denied by the panel, the independent counsel shall submit the information to the appropriate law enforcement authority.

(c) Return for further explanation.--Upon receipt of a notification under this subchapter that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the panel shall have no authority to overrule this determination but may return the matter to the special investigative counsel for further explanation of the reasons for the determination.

(d) Vacancies.--If a vacancy in office arises by reason of the resignation, death or removal of an independent counsel, the panel shall appoint an independent counsel to complete the work of the independent counsel whose resignation, death or removal caused the vacancy, except that, in the case of a vacancy arising by reason of the removal of an independent counsel, the panel may appoint an acting independent counsel to serve until any judicial review of the removal is completed. § 9518. Disclosure of information.

Except as otherwise provided in this chapter, no officer or employee of the office of special investigative counsel or the office of independent counsel may, without leave of the panel, disclose to any individual outside the office of special investigative counsel or office of independent counsel any notification, application or any other document, material or memorandum supplied to the panel under this chapter, including an application submitted under section 9516 (relating to contents of application) or the identity of a special investigative counsel or independent counsel. Nothing in this chapter shall be construed as authorizing the withholding of information from the General Assembly unless the panel determines that disclosure of the information would not be in the best interest of justice.

SUBCHAPTER C

AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL

Sec.

- 9531. Authorities.
 - 9532. Compensation and travel expenses.
 - 9533. Additional personnel.
 - 9534. Assistance of Pennsylvania State Police.
 - 9535. Referral of other matters to independent counsel.
 - 9536. Dismissal of matters.
 - 9537. Reports by independent counsel.
 - 9538. Independence from Office of Attorney General.
 - 9539. Standards of conduct.
 - 9540. Custody of records of independent counsel.
 - 9541. Cost controls and administrative support.
 - 9542. Legislative oversight.
 - 9543. Removal of independent counsel and termination of office.
 - 9544. Audits.
 - 9545. Relationship with Office of Attorney General.
 - 9546. Venue.
- § 9531. Authorities.

Notwithstanding any other provision of law, an independent counsel appointed under this chapter shall have, with respect to all matters in the independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Office of Attorney General, the Attorney General and any other officer or employee of the Office of Attorney General. Investigative and prosecutorial functions and powers shall include, but are not limited to:

- (1) Conducting proceedings before grand juries and other investigations.

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the independent counsel considers necessary.

(3) Appealing any decision of a court in any case or proceeding in which the independent counsel participates in an official capacity.

(4) Reviewing all documentary evidence available from any source.

(5) Determining whether to contest the assertion of any testimonial privilege.

(6) Receiving appropriate security clearances and, if necessary, contesting in court, including, where appropriate, participating in an in camera proceeding, any claim of privilege or attempt to withhold evidence on grounds of security.

(7) Making applications to any State court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas or other court orders and exercising the authority vested in the Attorney General or a district attorney.

(8) Inspecting, obtaining or using the original or a copy of any tax return in accordance with applicable statutes and regulations.

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing information and handling all aspects of any case in the name of the Commonwealth.

(10) Consulting with the district attorney for the county in which any violation of law with respect to which the independent counsel is appointed was alleged to have occurred.

§ 9532. Compensation and travel expenses.

An independent counsel appointed under this chapter shall receive compensation at the per diem rate equal to the annual rate of basic pay payable to the Attorney General. An independent counsel and persons appointed under section 9533 (relating to additional personnel) shall be entitled to the payment of travel expenses.

§ 9533. Additional personnel.

For the purposes of carrying out the duties of the office of independent counsel, the independent counsel may appoint, fix the compensation and assign the duties of the employees the independent counsel considers necessary, including, but not limited to, investigators, attorneys and necessary experts to assist with the criminal investigation. The positions of these employees are exempted from the competitive service. Employees shall be compensated at levels not to exceed those payable for comparable positions in the Office of Attorney General.

§ 9534. Assistance of Pennsylvania State Police.

An independent counsel may request assistance from the Pennsylvania State Police in carrying out the functions of the independent counsel, and the Pennsylvania State Police shall provide that assistance, which may include the use of the resources and personnel necessary to perform the independent counsel's duties.

§ 9535. Referral of other matters to independent counsel.

An independent counsel may petition the panel to refer to the independent counsel matters related to the independent counsel's prosecutorial jurisdiction, and the panel may refer these matters.

§ 9536. Dismissal of matters.

The independent counsel shall have full authority to dismiss matters within the independent counsel's prosecutorial jurisdiction at any subsequent time before prosecution.

§ 9537. Reports by independent counsel.

(a) Required reports.--An independent counsel shall:

(1) File with the panel, with respect to the six-month period beginning on the date of appointment and with respect to each six-month period thereafter until the office of that independent counsel terminates, a report which identifies and details all actual expenses, summarizes all other expenses incurred by that office during the six-month period with respect to which the report is filed and estimates future expenses of that office.

(2) Before the termination of the independent counsel's office under section 9543(b) (relating to removal of independent counsel and termination of office), file a final report with the panel, setting forth fully and completely a description of all prosecutions. All other information shall be confidential and not subject to public disclosure.

(a.1) Subject to requirements.--Individuals serving as an independent counsel and persons employed by or serving an independent counsel shall be subject to the requirements of the following acts:

(1) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.

(2) The provisions of 65 Pa.C.S. Ch. 11 (relating to ethics standards and financial disclosure).

(b) Disclosure of information in reports.--The panel may release to the General Assembly, the Governor, the State Treasurer, the public or any appropriate person the portions of a report made under this section as the panel considers appropriate. The panel shall make any orders as are appropriate to protect the rights of any individual named in the report and to prevent undue interference with any pending prosecution. The panel may make any portion of a final report filed under subsection (a) (2) available to any individual named in the report for the purposes of receiving within a time limit set by the panel any comments or factual information that the individual may submit. The comments and factual information, in whole or in part, may in the discretion of the panel be included as an appendix to the final report.

§ 9538. Independence from Office of Attorney General.

Each independent counsel appointed under this chapter and the persons appointed by that independent counsel under section 9533 (relating to additional personnel) are separate from and independent of the Office of Attorney General.

§ 9539. Standards of conduct.

(a) Restrictions on employment while independent counsel and appointees are serving.--During the period in which an independent counsel is serving under this chapter, the independent counsel and any person associated with a firm with which the independent counsel is associated may not represent in any matter any person involved in any investigation or prosecution under this chapter. During the period in which any person appointed by an independent counsel under section 9533 (relating to additional personnel) is serving in the office of independent counsel, the person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(b) Postemployment restrictions on independent counsel and appointees.--

(1) Each independent counsel and each person appointed by that independent counsel under section 9533 may not for three years following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution conducted by that independent counsel under this chapter.

(2) Each independent counsel and each person appointed by that independent counsel under section 9533 may not for one year following the termination of service under this chapter of that independent counsel or appointed person, as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(c) One-year ban on representation by members of firms of independent counsel.--Any person who is associated with a firm with which an independent counsel is associated or becomes associated after termination of service of that independent counsel under this chapter may not for one year following the termination represent any person in any matter involving any investigation or prosecution under this chapter.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Associated with a firm." A person who is an officer, director, partner or other member or employee of a law firm.

"Firm." A law firm, whether organized as a partnership or corporation.

§ 9540. Custody of records of independent counsel.

(a) Transfer of records.--Upon termination of the office of independent counsel, that independent counsel shall transfer to the Bureau of the Pennsylvania State Archives of the Pennsylvania Historical and Museum Commission all records which have been created or received by that office. Before this transfer, the independent counsel shall clearly identify which of these records are subject to the Pennsylvania Rules of Criminal Procedure as grand jury materials.

(b) Maintenance, use and disposal of records.--Records transferred to the Bureau of the Pennsylvania State Archives under this section shall be maintained, used and disposed of as provided by law.

§ 9541. Cost controls and administrative support.

(a) Cost controls.--An independent counsel shall:

(1) Conduct all activities with due regard for expense.

(2) Authorize only reasonable and lawful expenditures.

(3) Promptly upon taking office assign to a specific employee the duty of certifying that expenditures of the independent counsel are reasonable and made in accordance with law.

(b) Office of Administration policies.--An independent counsel shall comply with the established policies of the Office of Administration of the Governor respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

§ 9542. Legislative oversight.

(a) Oversight of conduct of independent counsel.--An independent counsel appointed under this chapter shall submit to the General Assembly a report detailing all funds expended as required under section 9537(a)(1) (relating to reports by independent counsel) and shall submit annually a report on the activities of the independent counsel, including a description of the progress of any investigation or prosecution conducted by the independent counsel. The report may omit any matter that

in the judgment of the independent counsel should be kept confidential but shall provide information adequate to justify the expenditures that the office of the independent counsel has made.

(b) Information relating to impeachment.--An independent counsel shall advise the House of Representatives of any substantial and credible information which the independent counsel receives in carrying out the independent counsel's responsibilities under this chapter that may constitute grounds for an impeachment. Nothing in this chapter shall prevent the General Assembly or either house thereof from obtaining information in the course of an impeachment proceeding.

§ 9543. Removal of independent counsel and termination of office.

(a) Removal, report on removal and termination.--

(1) An independent counsel appointed under this chapter may be removed from office only by the personal action of the panel and only for good cause, physical disability, mental incapacity or any other condition that substantially impairs the performance of the independent counsel's duties. For purposes of this paragraph, the term "good cause" includes violations of any ethical rules governing the independent counsel, the Attorney General or district attorneys.

(2) If an independent counsel is removed from office, the panel shall promptly submit to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal. The committees may make available to the public the report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report. The panel may release any or all of the report in accordance with section 9537(b) (relating to reports by independent counsel).

(3) An independent counsel removed from office may obtain judicial review of the removal in a civil action commenced in the Commonwealth Court. The independent counsel may be reinstated or granted other appropriate relief by order of the Commonwealth Court. A member of the panel may not hear or determine the civil action or any appeal of a decision in the civil action.

(b) Termination of office.--

(1) An office of independent counsel shall terminate when the independent counsel:

(i) notifies the panel that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by the independent counsel, and any resulting prosecutions, have been completed; and

(ii) files a final report in compliance with section 9537.

(2) The panel shall determine on its own motion whether termination is appropriate under this subsection no later than two years after the appointment of an independent counsel or the reported expenditures of the independent counsel, including personnel costs under sections 9532 (relating to compensation and travel expenses) and 9533 (relating to additional personnel), have reached \$2,000,000, whichever occurs first, and at the end of each succeeding one-year period.

§ 9544. Audits.

By December 31 of each year, an independent counsel shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding June 30. An independent counsel whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures within 90 days of the date on which the office is terminated. The Auditor General shall audit each statement and report the results of each audit to the appropriate committees of the General Assembly no later than March 31 of the year following the submission of the statement.

§ 9545. Relationship with Office of Attorney General.

Whenever a matter is in the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under section 9535 (relating to referral of other matters to independent counsel), the Office of Attorney General, the Attorney General, all other officers and employees of the Office of Attorney General and any district attorney shall suspend all investigations and proceedings regarding that matter and shall turn over to the independent counsel all materials, files and other data relating to that matter.

§ 9546. Venue.

The proper venue for all prosecutions conducted by the independent counsel shall be determined in accordance with the Pennsylvania Rules of Criminal Procedure, except that for the purposes of convenience and fairness, the panel may set the venue in any other county on its own motion or at the request of the independent counsel or on petition of the defendant.

Section 4. This act shall take effect in 60 days.

APPROVED--The 3rd day of November, A.D. 2016.

TOM WOLF