

**Colorado Revised Statutes: Title 20: District Attorneys:  
20-1-102: Appear on Behalf of State and Counties:**

TITLE 20. DISTRICT ATTORNEYS / ARTICLE 1. DISTRICT ATTORNEYS / PART 1. GENERAL PROVISIONS /  
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(1) Every district attorney shall appear in behalf of the state and the several counties of his or her district:

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

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

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

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

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

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

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

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

Case Notes / Annotation:

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

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

District attorney is proper officer to institute quo warranto proceedings in inferior courts. The district attorney, and not the attorney general, is the proper officer to institute proceedings in quo warranto in the inferior courts and he may also under this section follow the case into the supreme court, from which time the attorney general would at once be entitled to control its further progress. People ex rel. Jerome v. Regents of Univ. of Colo., 24 Colo. 175, 49 P. 286 (1897).

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

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

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

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

The district attorney has the general authority to file a motion to resentence as a mechanism to notify the state district court of the federal district court's conditional grant of habeas corpus relief. People v. Wood, 2016 COA 134, -- P.3d --.

Section 24-31-101 and this section are not inconsistent. Section 24-31-101, permitting the governor to appoint the attorney general to prosecute cases in which the state is a party or is interested, and this section, directing the district attorney to appear on behalf of the state or counties of his district where the state or the people thereof or any county may be a party, are not inconsistent. They may stand together. The specific duty imposed upon the district attorneys in no way limits or excludes the general

authority of the attorney general upon the same subject. *People ex rel. Witcher v. District Court*, 190 Colo. 483, 549 P.2d 778 (1976); *People v. Vickers*, 199 Colo. 305, 608 P.2d 808 (1980).

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

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

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

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

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

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

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

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

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

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

Prosecutors absolutely immune from suit under 42 U.S.C. § 1983 for "advocatory" functions closely related to the judicial process, but only qualifiedly immune from suit for "investigative" or

"administrative" functions, which have a more attenuated connection with the judicial process. *Florey v. District Court*, 713 P.2d 840 (Colo. 1985).

Test to determine whether prosecutor absolutely or only qualifiedly immune from suit under 42 U.S.C. § 1983 for certain acts. Factors to be considered in determining whether acts of prosecutors are "advocatory" in nature and absolutely immune or "investigative" or "administrative" functions and only qualifiedly immune: (1) Whether the challenged conduct occurred prior to or subsequent to the filing of formal criminal charges against the person seeking redress; (2) whether there existed safeguards that could deter or mitigate prosecutorial abuse and thus reduce the need for civil action to redress the violation of constitutional rights; and (3) whether the challenged conduct more closely resembled traditional police conduct than prosecutorial conduct. *Florey v. District Court*, 713 P.2d 840 (Colo. 1985).

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

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

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

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

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

Applied in

People ex rel. Tooley v. District Court, 190 Colo. 486, 549 P.2d 774 (1976); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982); People v. Castro, 657 P.2d 932 (Colo. 1983).