

## CHAPTER 11-16 STATE'S ATTORNEY

### **11-16-01. Duties of the state's attorney.**

The state's attorney is the public prosecutor, and shall:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.
2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when the state's attorney has information that such offenses have been committed, and for that purpose, when the state's attorney is not engaged in criminal proceedings in the district court, the state's attorney shall attend upon the magistrates in cases of arrests when required by them except in cases of assault and battery and petit larceny.
3. Attend before, and give advice to, the grand jury whenever cases are presented to it for consideration.
4. Draw all indictments and informations.
5. Defend all suits brought against the state or against the county.
6. Prosecute all bonds forfeited in the courts of record of the county and prosecute all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or to the county.
7. Deliver duplicate receipts for money or property received in the state's attorney's official capacity and file copies thereof with the county auditor.
8. On the first Monday of January, April, July, and October in each year, file with the county auditor an account, verified by the state's attorney's oath, of all money received by the state's attorney in an official capacity in the preceding three months, and at the same time, pay it over to the county treasurer.
9. Give, when required and without fee, the state's attorney's opinion in writing to the county, district, township, and school district officers on matters relating to the duties of their respective offices.
10. Keep a register of all official business in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.
11. Repealed by S.L. 1945, ch. 161, § 1.
12. Act as legal adviser of the board of county commissioners, attend the meetings thereof when required, and oppose all claims and actions presented against the county which are unjust or illegal.
13. Institute an action in the name of the county to recover any money paid upon the order of the board of county commissioners without authority of law as salary, fee, or for any other purpose, or any money paid on a warrant drawn by any officer to that officer's own order or in favor of any other person without authorization by the board of county commissioners or by law.
14. Institute an action in the name of the county to restrain the payment of any money described in any order or warrant of the kind described in subsection 13 when the state's attorney secures knowledge of such order or warrant before the money is paid thereon.
15. Assist the district court in behalf of the recipient of payments for child support or spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments.
16. Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.

The state's attorney shall not require any order of the board of county commissioners to institute an action under subsection 13 or 14.

#### **11-16-01.1. Restitution collection and enforcement.**

Except as provided in this section, the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, shall continue to perform those

activities. In counties in which a county office performs those activities, a county may transfer responsibility for the activities to another county office.

**11-16-02. Assistant - Appointment - Duties.**

The state's attorney may appoint assistant state's attorneys, who, when qualified by filing the required oath of office, shall have the same powers as, and shall perform any and all duties required of, the state's attorney. The state's attorney is responsible, under the state's attorney's official bond, for any and all acts of such assistant. The work of an assistant state's attorney must be assigned by the state's attorney.

**11-16-03. Person receiving receipt from state's attorney to file the same.**

Any person who shall receive duplicate receipts from the state's attorney for moneys paid to the state's attorney shall file one copy of each such receipt in the office of the county treasurer.

**11-16-04. Penalty for failure to pay over moneys.**

Whenever the state's attorney shall refuse or neglect to account for or pay over the public moneys received by the state's attorney, the state's attorney is guilty of an infraction.

**11-16-05. Restrictions on powers of state's attorney - Option regarding full-time state's attorneys - Penalty for breach of duty.**

The state's attorney shall not:

1. Present a claim, account, or other demand for allowance against the county, except for the state's attorney's own services, nor in any way advocate the relief asked for by the claim or demand of another.
2. Be eligible to or hold any state or federal judicial office except that of United States commissioner.
3. Receive a fee or reward from or on behalf of a prosecutor or other individual for services in any prosecution or business to which it is the state's attorney's official duty to attend.
4. Be concerned as attorney or counsel for any party, other than the state or county, in any civil action depending upon, or arising out of, a state of facts upon which a pending and undetermined criminal prosecution depends.
5. Be concerned as attorney or counsel for any party, other than the state or county, or other than a city within the county, when so authorized by resolution of the board of county commissioners, in any action or proceeding whatsoever when employed by a county having a population exceeding thirty-five thousand or by any other county whose board of commissioners has, by resolution, determined that the state's attorney shall be restricted in this manner. A board of county commissioners may adopt or rescind a resolution under this subsection in any year. However, in the general election year in which the state's attorney is to be elected, such action must be taken prior to June first. Such adoption or rescission shall not be effective during the state's attorney's current term of office unless agreed upon between the board and the state's attorney.

A violation of any provision of this section shall constitute an infraction, and the offender may be removed from office.

**11-16-06. Failure of state's attorney to perform duty - Power of court - Appointment of acting state's attorney.**

If it shall appear, by affidavit or otherwise, to the satisfaction of a judge of the district court of the judicial district in which the county is situated, that the county has no state's attorney, or that the state's attorney is absent or unable to attend to the state's attorney's duties, or that the state's attorney has refused or neglected to perform any of the duties prescribed in subsections 2 through 6 of section 11-16-01, or to institute any civil suit to which the state or the county is a party after the matter has been properly brought to the attention of such state's attorney, and that it is necessary that some act be performed, the judge shall:

1. Request the attorney general or an assistant attorney general to take charge of such prosecution or proceeding; or
2. Appoint an attorney to take charge of such prosecution or proceeding and fix the attorney's fee therefor by an order entered upon the minutes of the court, and the attorney so appointed shall be vested with the powers of the state's attorney for the purposes of that action, but for no other purpose, and shall be the only person authorized to proceed in such action. The fee specified in the order shall be allowed by the board of county commissioners and, if so ordered by the court, the amount of such fee shall be deducted from the salary of the state's attorney.

**11-16-07. District judge may appoint special counsel to assist state's attorney - Compensation.**

The judge of the district court may appoint special counsel to assist the state's attorney in any important case. The county for which the services were rendered shall pay such special counsel a reasonable fee therefor to be approved by the court.

**11-16-08. County commissioners may employ special counsel for the county.**

The board of county commissioners, in cases of public importance and with the advice and consent of the state's attorney, may employ additional counsel to assist the state's attorney. Such counsel shall receive such compensation as may be agreed upon between the parties.

**11-16-09. State's attorney's contingent fund.**

The board of county commissioners shall set aside from any funds in the county treasury not specifically appropriated or set aside for any other purpose the following sum of money to be used by the state's attorney of the county as a contingent fund for the purpose of defraying the necessary expenses that are not otherwise provided for in securing evidence, investigating criminal cases, and furthering justice:

1. Not less than five hundred dollars and not more than one thousand dollars in counties having a population of ten thousand inhabitants or less.
2. Not less than one thousand dollars and not more than one thousand five hundred dollars in counties having a population of more than ten thousand and not more than twenty thousand inhabitants.
3. Not less than one thousand five hundred dollars and not more than two thousand dollars in counties having a population of more than twenty thousand inhabitants.

**11-16-10. Use of state's attorney's contingent fund.**

The state's attorney may incur expenses in securing evidence and investigating criminal cases, so far as is necessary, to the amount annually appropriated by the board of county commissioners to the state's attorney's contingent fund.

**11-16-11. District judge to require statement before approving order for payment from state's attorney's contingent fund.**

Repealed by S.L. 2013, ch. 92, § 9.

**11-16-12. Statement of expense paid from state's attorney's contingent fund to be filed.**

Repealed by S.L. 2013, ch. 92, § 9.

**11-16-13. Warrants on state's attorney's contingent fund.**

All disbursements from the state's attorney's contingent fund must be made in the usual manner by the county treasurer upon the warrant of the county auditor. The auditor's warrant must be executed and delivered in the amount and to the person designated by the order of the state's attorney.

**11-16-14. Unexpired balance of state's attorney's contingent fund.**

Any sum remaining in the state's attorney's contingent fund on the thirty-first day of December of each year shall be transferred by the county auditor to the general fund of the county.

**11-16-15. Criminal act causing death - Felony - Inquiry - State's attorney may subpoena witnesses.**

If a state's attorney is aware of any violation or criminal act causing a death or has reason to believe a felony has been committed, the state's attorney may, prior to a crime being charged, inquire into the facts of the violation or criminal act, and, with the consent and approval of the district judge of the county, for such purpose the state's attorney may issue a subpoena for any person who the state's attorney has reason to believe has any information or knowledge of the violation, to appear at a time and place designated in such subpoena to testify concerning the violation. The subpoena must be directed to the sheriff of the county and must be served and returned to the state's attorney in the same manner as subpoenas are served and returned in criminal cases. Each witness must be sworn to testify under oath and to make true answer to all questions which may be propounded to the witness by the state's attorney touching the violation or criminal act. The testimony of every witness must be reduced to writing and must become a part of the coroner's files in the case of a death and of the state's attorney's files in all other cases. For all purposes in this section, the state's attorney may:

1. Administer oaths or affirmations to all witnesses.
2. Apply to the district court for the punishment of any witness for contempt for any disobedience of a subpoena, a refusal to be sworn or to answer as a witness, or a refusal to sign testimony of the witness.
3. Compel the attendance of witnesses under the North Dakota Rules of Criminal Procedure. Any witness compelled to testify under this section is entitled to counsel and all other constitutional rights.