

dismissed, that officer or employee ~~[shall be]~~ is entitled to recover from the public entity reasonable attorney fees and court costs necessarily incurred in the defense of those charges, counts, or portions of the indictment or information that were quashed, dismissed, or resulted in a judgment of acquittal, unless the alleged misconduct covered by those charges, counts, or portions of the indictment or information that were quashed, dismissed, or resulted in a judgment of acquittal is substantially the same ~~§~~ → alleged ← ~~§~~ misconduct that formed the basis for charges, counts, or portions of the indictment or information of which the officer or employee was found guilty.

(3) An officer or employee entitled to recover reasonable attorney fees and court costs under Subsection (1) or (2) in connection with the officer's or employee's position within a political subdivision, is entitled to recover all fees and costs from the state rather than the political subdivision, if:

(a) after the local attorney declines to pursue an indictment, or file an information, against the officer or employee, the attorney general obtains an indictment, or files an information, against the officer or employee;

(b) the alleged misconduct forming the basis of the indictment or information against the officer or employee is substantially similar to the facts or investigation results upon which the local attorney relied in deciding not to pursue an indictment, or file an information, against the officer or employee; and

(c) the attorney general pursued the indictment, or filed the information, against the officer or employee, for a reason other than that:

(i) the local attorney requested the attorney general's involvement in the prosecution of the officer or employee due to a conflict of interest; or

(ii) the local attorney lacked the resources or subject matter expertise to initiate or proceed with the prosecution of the officer or employee.

~~[(3)]~~ (4) An officer or employee who recovers under this section shall also be entitled to recover reasonable attorney fees and costs necessarily incurred by the officer or employee in recovering the attorney fees and costs allowed under this section, including attorney fees and costs incurred on appeal.

~~[(4)]~~ (5) Notwithstanding any other provision of this section, an officer or employee may not recover for the costs incurred in defense of any charge, count, or portion of the