

By: Cook

H.B. No. 17

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the official misconduct and removal of district  
3 attorneys and county attorneys.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter B, Chapter 87, Local Government Code,  
6 is amended by amending Sections 87.011, 87.015, and 87.018 to read  
7 as follows:

8 Sec. 87.011. DEFINITIONS. In this subchapter:

9 (1) "District attorney" includes a criminal district  
10 attorney.

11 (2) "Incompetency" means:

12 (A) gross ignorance of official duties;

13 (B) gross carelessness in the discharge of those  
14 duties; or

15 (C) unfitness or inability to promptly and  
16 properly discharge official duties because of a serious physical or  
17 mental defect that did not exist at the time of the officer's  
18 election.

19 (3) "Official misconduct" means intentional, unlawful  
20 behavior relating to official duties by an officer entrusted with  
21 the administration of justice or the execution of the law. The term  
22 includes:

23 (A) an intentional or corrupt failure, refusal,  
24 or neglect of an officer to perform a duty imposed on the officer by

1 law; and

2 (B) the adoption or implementation of a formal or  
3 stated policy by a district attorney or a county attorney under  
4 which that attorney prohibits or materially limits the enforcement  
5 of any criminal offense other than to comply with an injunction,  
6 judgment, or order issued by a court.

7 Sec. 87.015. PETITION FOR REMOVAL. (a) A proceeding for  
8 the removal of an officer is begun by filing a written petition for  
9 removal in a district court of the county in which the officer  
10 resides. However, a proceeding for the removal of a district  
11 attorney is begun by filing a written petition in a district court  
12 of:

- 13 (1) the county in which the attorney resides; or  
14 (2) the county where the alleged cause of removal  
15 occurred, if that county is in the attorney's judicial district.

16 (b) Any resident of this state who has lived for at least six  
17 months in the county in which the alleged cause of removal occurred  
18 [~~petition is to be filed~~] and who is not currently under information  
19 or indictment in that [~~the~~] county may file the petition. At least  
20 one of the parties who files the petition must swear to it at or  
21 before the filing.

22 (c) The petition must be addressed to the presiding judge  
23 for the administrative region for [~~district judge of~~] the court in  
24 which it is filed. The petition must set forth the grounds alleged  
25 for the removal of the officer in plain and intelligible language  
26 and must cite the time and place of the occurrence of each act  
27 alleged as a ground for removal with as much certainty as the nature

1 of the case permits.

2           Sec. 87.018. TRIAL. (a) Officers may be removed only  
3 following a trial by jury.

4           (b) The trial for removal of an officer and the proceedings  
5 connected with the trial shall be conducted as much as possible in  
6 accordance with the rules and practice of the court in other civil  
7 cases, in the name of the State of Texas, and on the relation of the  
8 person filing the petition.

9           (c) In a removal case, the judge may not submit special  
10 issues to the jury. Under a proper charge applicable to the facts  
11 of the case, the judge shall instruct the jury to find from the  
12 evidence whether the grounds for removal alleged in the petition  
13 are true. If the petition alleges more than one ground for removal,  
14 the jury shall indicate in the verdict which grounds are sustained  
15 by the evidence and which are not sustained.

16           (d) The county attorney shall represent the state in a  
17 proceeding for the removal of an officer except as otherwise  
18 provided by Subsection (e) or (f).

19           (e) In a proceeding to remove a county attorney from office,  
20 the district attorney shall represent the state. If the county does  
21 not have a district attorney, the presiding judge shall appoint a  
22 prosecuting attorney from another county in that administrative  
23 region and that attorney shall represent the state [~~county attorney~~  
24 ~~from an adjoining county, as appointed selected by the~~  
25 ~~commissioners court of the county in which the proceeding is~~  
26 ~~pending, shall represent the state~~].

27           (f) In a proceeding to remove the county attorney or

1 district attorney from office, the presiding judge shall appoint a  
2 prosecuting attorney from another county in that administrative  
3 region and that attorney shall represent the state [~~the county~~  
4 ~~attorney from an adjoining county, as selected by the commissioners~~  
5 ~~court of the county in which the proceeding is pending, shall~~  
6 ~~represent the state~~] if the attorney who would otherwise represent  
7 the state under this section is also the subject of a pending  
8 removal proceeding.

9 (g) A public declaration or announcement by a district  
10 attorney or a county attorney of an intent to prohibit the  
11 enforcement of any criminal offense is prima facie evidence of an  
12 adoption or implementation of a formal or stated policy for  
13 purposes of this chapter.

14 SECTION 2. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2023.