

1-1 By: Aliseda (Senate Sponsor - Whitmire) H.B. No. 1638
1-2 (In the Senate - Received from the House April 11, 2011;
1-3 May 10, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 20, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 20, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1638 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the disqualification of a district or county attorney
1-11 who is the subject of a criminal investigation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 2.08, Code of Criminal Procedure, is
1-14 amended to read as follows:

1-15 Art. 2.08. DISQUALIFIED. (a) District and county
1-16 attorneys shall not be of counsel adversely to the State in any
1-17 case, in any court, nor shall they, after they cease to be such
1-18 officers, be of counsel adversely to the State in any case in which
1-19 they have been of counsel for the State.

1-20 (b) A judge of a court in which a district or county attorney
1-21 represents the State shall declare the district or county attorney
1-22 disqualified for purposes of Article 2.07 on a showing that the
1-23 attorney is the subject of a criminal investigation by a law
1-24 enforcement agency if that investigation is based on credible
1-25 evidence of criminal misconduct for an offense that is within the
1-26 attorney's authority to prosecute. A disqualification under this
1-27 subsection applies only to the attorney's access to the criminal
1-28 investigation pending against the attorney and to any prosecution
1-29 of a criminal charge resulting from that investigation.

1-30 SECTION 2. The change in law made by this Act applies only
1-31 to the prosecution of an offense committed on or after the effective
1-32 date of this Act. The prosecution of an offense committed before
1-33 the effective date of this Act is governed by the law in effect on
1-34 the date the offense was committed, and the former law is continued
1-35 in effect for that purpose. For purposes of this section, an
1-36 offense was committed before the effective date of this Act if any
1-37 element of the offense occurred before that date.

1-38 SECTION 3. This Act takes effect September 1, 2011.

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