

By: Dutton

H.B. No. 1369

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of a special prosecution division in the
3 office of the attorney general to investigate and prosecute peace
4 officer misconduct.

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

6 SECTION 1. Chapter 2, Code of Criminal Procedure, is
7 amended by adding Article 2.081 to read as follows:

8 Art. 2.081. DISQUALIFIED FROM PEACE OFFICER MISCONDUCT.

9 (a) In this article:

10 (1) "Peace officer misconduct" means any criminal
11 offense committed by a peace officer acting under the authority of
12 the state or a political subdivision of the state.

13 (2) "Prosecuting attorney" means a district attorney,
14 criminal district attorney, or county attorney.

15 (b) A prosecuting attorney is disqualified from the
16 prosecution of peace officer misconduct.

17 (c) Article 2.07 does not apply to the disqualification of a
18 prosecuting attorney under this article.

19 SECTION 2. Chapter 2, Code of Criminal Procedure, is
20 amended by adding Article 2.139 to read as follows:

21 Art. 2.139. PEACE OFFICER MISCONDUCT REPORTS. (a) In this
22 article:

23 (1) "Law enforcement agency" means an agency of the
24 state or an agency of a political subdivision of the state

1 authorized by law to employ peace officers.

2 (2) "Peace officer misconduct" has the meaning
3 assigned by Article 2.081(a).

4 (3) "Special prosecution division" means the division
5 established under Section 402.038, Government Code.

6 (b) Not later than 48 hours after the receipt of an
7 allegation of peace officer misconduct, the law enforcement agency
8 employing the applicable peace officer or officers shall report the
9 allegation to the special prosecution division of the office of the
10 attorney general.

11 (c) A law enforcement agency that submits a report under
12 Subsection (b) shall cooperate with the special prosecution
13 division in the investigation and any resulting prosecution by the
14 division.

15 SECTION 3. Section 402.009, Government Code, is amended to
16 read as follows:

17 Sec. 402.009. AUTHORITY TO EMPLOY AND COMMISSION PEACE
18 OFFICERS. The attorney general may employ and commission peace
19 officers as investigators for:

20 (1) the limited purpose of assisting the attorney
21 general in carrying out the duties of that office relating to
22 prosecution assistance and crime prevention; or

23 (2) the purpose of investigating offenses that the
24 special prosecution division is required to investigate under
25 Section 402.038(b).

26 SECTION 4. Subchapter B, Chapter 402, Government Code, is
27 amended by adding Section 402.038 to read as follows:

1 Sec. 402.038. SPECIAL PROSECUTION DIVISION. (a) In this
2 section:

3 (1) "Law enforcement agency" has the meaning assigned
4 by Article 2.139(a), Code of Criminal Procedure.

5 (2) "Peace officer misconduct" and "prosecuting
6 attorney" have the meanings assigned by Article 2.081(a), Code of
7 Criminal Procedure.

8 (3) "Peace officer" means a person elected, employed,
9 or appointed as a peace officer under Article 2.12, Code of Criminal
10 Procedure, or other law.

11 (b) The attorney general shall establish the special
12 prosecution division to investigate peace officer misconduct
13 reported to the division by a law enforcement agency under Article
14 2.139, Code of Criminal Procedure.

15 (c) Only the special prosecution division may prosecute a
16 peace officer in a case of peace officer misconduct. In prosecuting
17 a case of peace officer misconduct, the division has all the powers
18 of a prosecuting attorney, including the power to represent the
19 state before a grand jury.

20 SECTION 5. (a) Not later than December 1, 2015, the
21 attorney general shall establish the special prosecution division
22 under Section 402.038, Government Code, as added by this Act.

23 (b) Not later than January 1, 2016, each law enforcement
24 agency shall comply with the requirements under Article 2.139, Code
25 of Criminal Procedure, as added by this Act.

26 (c) Article 2.081, Code of Criminal Procedure, as added by
27 this Act, and Section 402.038, Government Code, as added by this

1 Act, apply only to the investigation and any resulting prosecution
2 of peace officer misconduct commencing on or after January 1, 2016.
3 The investigation and any resulting prosecution of peace officer
4 misconduct commencing before January 1, 2016, is governed by the
5 law in effect on the date the investigation and any resulting
6 prosecution commenced, and the former law is continued in effect
7 for that purpose. For purposes of this subsection, "peace officer
8 misconduct" has the meaning assigned by Article 2.081(a), Code of
9 Criminal Procedure, as added by this Act.

10 SECTION 6. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.