

## **BILL ANALYSIS**

C.S.H.B. 17  
By: Cook  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The 87th Legislature's House Interim Study Committee on Criminal Justice Reform examined the abuse of prosecutorial discretion by district attorneys and county attorneys. During its hearings, concerns were raised regarding local prosecutors adopting internal policies and issuing public pronouncements that entire classes of crimes would not be prosecuted within their respective jurisdictions. Article 2.01 of the Code of Criminal Procedure states that the primary duty of a DA is "to see that justice is done." Local control is vested with prosecutors to accomplish this by evaluating the merits of each alleged crime on a case-by-case basis, namely prosecutorial discretion. However, refusal to prosecute entire classes of crimes not only usurps the legislature's policymaking authority but endangers public safety as well.

C.S.H.B. 17 seeks to address this issue by defining "official misconduct," specifically, as "a prosecuting attorney's adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses under state law," unless the policy is adopted for specific reasons or under specified circumstances. For petitions brought to seek the removal of a prosecuting attorney, the presiding judge of the administrative judicial region must assign a judge from another county to hear the petition. Similarly, for a removal trial, the presiding judge must appoint a prosecuting attorney from another county in the administrative judicial region to represent the state. Most important, a public statement issued by a prosecuting attorney indicating the attorney has adopted or enforced or intends to adopt or enforce such a policy creates a rebuttable presumption that the attorney has committed official misconduct for purposes of a removal.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 17 amends the Local Government Code to revise, as follows, provisions relating to the removal from office of a prosecuting attorney, defined as a district attorney or a county attorney with criminal jurisdiction:

- includes among the actions considered to be official misconduct for purposes of that removal the adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses under state law, except if the policy is adopted:
  - in compliance with state law or an injunction, judgment, or other court order;
  - in response to an evidentiary impediment to prosecution;

- to provide for diversion or similar conditional dismissals of cases; or
- to require supervisory review or the presentation of certain specified evidence before prosecution is authorized;
- authorizes a petition for removal of a prosecuting attorney to be filed by any Texas resident who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense other than a Class C misdemeanor in that county;
- requires at least one of the parties who files the petition to swear to it at or before the filing;
- requires the petition to be addressed to the presiding judge of the administrative judicial region in which the petition is filed;
- requires the district clerk, immediately after the petition is filed, to deliver a copy of the petition to the presiding judge;
- requires the presiding judge, on receiving the petition, to assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings;
- replaces the requirement for a county attorney from an adjoining county to be selected by the commissioners court of the county in which the proceeding is pending to represent the state in the removal proceeding if the attorney who would otherwise represent the state is also the subject of the proceeding with a requirement for the presiding judge to appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to represent the state; and
- establishes that for purposes of the removal proceeding, a prosecuting attorney's public statement indicating the attorney has adopted or enforced or intends to adopt or enforce a policy of categorically refusing to prosecute specific criminal offenses under state law creates a rebuttable presumption that the attorney has committed official misconduct.

The bill defines "policy" as an instruction or directive expressed in any matter.

C.S.H.B. 17 applies only to an action taken by a prosecuting attorney on or after the bill's effective date.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 17 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute include among the actions considered to be "official misconduct" certain actions regarding the adoption of a policy, but the included actions differ as follows:

- the introduced includes the adoption or implementation of a formal or stated policy by a district attorney or a county attorney under which that attorney prohibits or materially limits the enforcement of any criminal offense other than to comply with an injunction, judgment, or order issued by a court; but
- the substitute includes a prosecuting attorney's adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses under state law, except if the policy is adopted as specified by the substitute.

The substitute more narrowly tailors its provisions to provide for the removal specifically of a prosecuting attorney, as compared to the introduced, which made changes that were more broadly applicable. Thus, the substitute does not include the changes, which were in the

introduced, to eligibility requirements for filing a petition for removal of an officer but instead sets distinct eligibility requirements for filing a petition for removal of a prosecuting attorney. And, while both the introduced and the substitute change the person to whom such a petition must be addressed from the district judge of the court in which the petition is filed to the presiding judge for the administrative region for that court, the substitute makes that change applicable only to a petition for removal of a prosecuting attorney.

Both the substitute and the introduced revise statutory provisions to require an applicable presiding judge to appoint a prosecuting attorney from another county to represent the state in a removal proceeding. However, the substitute specifies that the attorney may be from either another judicial district or another county, as applicable, in the administrative judicial region.

The substitute includes the following requirements that were not in the introduced:

- the requirement for the district clerk, immediately after the petition is filed, to deliver a copy to the presiding judge of the administrative judicial region in which the court sits; and
- the requirement for the presiding judge, on receiving the petition, to assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings.

Both the substitute and the introduced include provisions establishing a basis for certain proof that may be taken from public statements made by an applicable attorney with respect to a disallowed policy, but the provisions differ as follows:

- the introduced provided that a public declaration or announcement by the attorney of an intent to prohibit the enforcement of any criminal offense is prima facie evidence of an adoption or implementation of a formal or stated policy for purposes of the removal; and
- the substitute provides that a public statement by the prosecuting attorney indicating the attorney has adopted or enforced or intends to adopt or enforce a policy of categorically refusing to prosecute specific criminal offenses under state law creates a rebuttable presumption that the attorney has committed official misconduct.

The substitute defines the following terms that were not defined in the introduced:

- "policy" means an instruction or directive expressed in any matter; and
- "prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

The substitute includes a provision absent from the introduced making the bill's provisions applicable only to an action taken by a prosecuting attorney on or after the bill's effective date.