

By: Cook, Moody, Leach, Metcalf, Burrows,
et al.

H.B. No. 17

A BILL TO BE ENTITLED

AN ACT

relating to official misconduct by and removal of prosecuting attorneys.

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

SECTION 1. Section 87.011, Local Government Code, is amended by amending Subdivision (3) and adding Subdivisions (4) and (5) to read as follows:

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

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

(B) a prosecuting attorney's adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses under state law, except a policy adopted:

(i) in compliance with state law or an injunction, judgment, or other court order;

(ii) in response to an evidentiary impediment to prosecution;

(iii) to provide for diversion or similar conditional dismissals of cases when not otherwise prohibited by

1 state law; or

2 (iv) to require supervisory review or the
3 presentation of certain specified evidence before prosecution is
4 authorized.

5 (4) "Policy" means an instruction or directive
6 expressed in any manner.

7 (5) "Prosecuting attorney" means a district attorney
8 or a county attorney with criminal jurisdiction.

9 SECTION 2. Section 87.015, Local Government Code, is
10 amended by amending Subsections (b) and (c) and adding Subsection
11 (b-1) to read as follows:

12 (b) A petition for removal of an officer other than a
13 prosecuting attorney may be filed by any [Any] resident of this
14 state who has lived for at least six months in the county in which
15 the petition is to be filed and who is not currently under
16 indictment in the county [may file the petition]. At least one of
17 the parties who files the petition must swear to it at or before the
18 filing.

19 (b-1) A petition for removal of a prosecuting attorney may
20 be filed by any resident of this state who, at the time of the
21 alleged cause of removal, lives and has lived for at least six
22 months in the county in which the alleged cause of removal occurred
23 and who is not currently charged with a criminal offense other than
24 a Class C misdemeanor in that county. At least one of the parties
25 who files the petition must swear to it at or before the filing.

26 (c) A [The] petition for removal of an officer other than a
27 prosecuting attorney must be addressed to the district judge of the

1 court in which it is filed. A petition for removal of a prosecuting
2 attorney must be addressed to the presiding judge of the
3 administrative judicial region in which the petition is filed. The
4 petition must set forth the grounds alleged for the removal of the
5 officer in plain and intelligible language and must cite the time
6 and place of the occurrence of each act alleged as a ground for
7 removal with as much certainty as the nature of the case permits.

8 SECTION 3. Subchapter B, Chapter 87, Local Government Code,
9 is amended by adding Section 87.0151 to read as follows:

10 Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a)
11 Immediately after a petition for removal of a prosecuting attorney
12 is filed with a district court under Section 87.015, the district
13 clerk shall deliver a copy of the petition to the presiding judge of
14 the administrative judicial region in which the court sits.

15 (b) On receiving a petition for removal of a prosecuting
16 attorney under Subsection (a), the presiding judge of the
17 administrative judicial region shall assign a district court judge
18 of a judicial district that does not include the county in which the
19 petition was filed to conduct the removal proceedings.

20 SECTION 4. Section 87.018, Local Government Code, is
21 amended by amending Subsections (e) and (f) and adding Subsections
22 (g) and (h) to read as follows:

23 (e) In a proceeding to remove a county attorney who is not a
24 prosecuting attorney from office, the district attorney shall
25 represent the state. If the county does not have a district
26 attorney, the county attorney from an adjoining county, as selected
27 by the commissioners court of the county in which the proceeding is

1 pending, shall represent the state.

2 (f) In a proceeding to remove a prosecuting attorney [~~the~~
3 ~~county attorney or district attorney~~] from office, the presiding
4 judge of the administrative judicial region in which the petition
5 for removal was filed shall appoint a prosecuting [~~the county~~]
6 attorney from another judicial district or county, as applicable,
7 in the administrative judicial region to [~~from an adjoining county,~~
8 ~~as selected by the commissioners court of the county in which the~~
9 ~~proceeding is pending, shall~~] represent the state [~~if the attorney~~
10 ~~who would otherwise represent the state under this section is also~~
11 ~~the subject of a pending removal proceeding~~].

12 (g) In a proceeding to remove a prosecuting attorney from
13 office, a prosecuting attorney's public statement that the
14 prosecuting attorney has adopted or enforced or intends to adopt or
15 enforce a policy described by Section 87.011(3)(B) creates a
16 rebuttable presumption that the prosecuting attorney has committed
17 official misconduct.

18 (h) A prosecuting attorney who prevails in a proceeding
19 under this section is entitled to reasonable attorney's fees and
20 costs that the prosecuting attorney personally expended in the
21 proceeding.

22 SECTION 5. The changes in law made by this Act apply only to
23 an action taken or public statement made by a prosecuting attorney
24 on or after the effective date of this Act.

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2023.