

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;

(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense 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 a reasonable evidentiary impediment to prosecution; or

(iii) to provide for diversion or similar

1 conditional dismissals of cases when permissible under state law;

2 or

3 (C) permitting an attorney who is employed by or
4 otherwise under the direction or control of the prosecuting
5 attorney to refuse to prosecute a class or type of criminal offense
6 under state law or instruct law enforcement to refuse to arrest
7 individuals suspected of committing a class or type of offense
8 under state law for any reason other than a reason described by
9 Paragraph (B)(i), (ii), or (iii).

10 (4) "Policy" means an instruction or directive
11 expressed in any manner.

12 (5) "Prosecuting attorney" means a district attorney
13 or a county attorney with criminal jurisdiction.

14 SECTION 2. Subchapter B, Chapter 87, Local Government Code,
15 is amended by adding Section 87.0131 to read as follows:

16 Sec. 87.0131. DEFENSE IN CERTAIN CASES. It is a defense in
17 an action alleging a prosecuting attorney committed official
18 misconduct described by Section 87.011(3)(C) that the prosecuting
19 attorney took action immediately on discovering an attorney
20 employed by or otherwise under the direction or control of the
21 prosecuting attorney was acting as described by Section
22 87.011(3)(C).

23 SECTION 3. Section 87.015, Local Government Code, is
24 amended by amending Subsections (b) and (c) and adding Subsection
25 (b-1) to read as follows:

26 (b) A petition for removal of an officer other than a
27 prosecuting attorney may be filed by any [Any] resident of this

1 state who has lived for at least six months in the county in which
2 the petition is to be filed and who is not currently under
3 indictment in the county [~~may file the petition~~]. At least one of
4 the parties who files the petition must swear to it at or before the
5 filing.

6 (b-1) A petition for removal of a prosecuting attorney may
7 be filed by any resident of this state who, at the time of the
8 alleged cause of removal, lives and has lived for at least six
9 months in the county in which the alleged cause of removal occurred
10 and who is not currently charged with a criminal offense in that
11 county. At least one of the parties who files the petition must
12 swear to it at or before the filing.

13 (c) A [The] petition for removal of an officer other than a
14 prosecuting attorney must be addressed to the district judge of the
15 court in which it is filed. A petition for removal of a prosecuting
16 attorney must be addressed to the presiding judge of the
17 administrative judicial region in which the petition is filed. The
18 petition must set forth the grounds alleged for the removal of the
19 officer in plain and intelligible language and must cite the time
20 and place of the occurrence of each act alleged as a ground for
21 removal with as much certainty as the nature of the case permits.

22 SECTION 4. Subchapter B, Chapter 87, Local Government Code,
23 is amended by adding Section 87.0151 to read as follows:

24 Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a)
25 Immediately after a petition for removal of a prosecuting attorney
26 is filed under Section 87.015, the district clerk shall deliver a
27 copy of the petition to the presiding judge of the administrative

1 judicial region in which the court sits.

2 (b) On receiving a petition for removal of a prosecuting
3 attorney under Subsection (a), the presiding judge of the
4 administrative judicial region shall assign a district court judge
5 of a judicial district that does not include the county in which the
6 petition was filed to conduct the removal proceedings.

7 SECTION 5. Section 87.018, Local Government Code, is
8 amended by amending Subsections (e) and (f) and adding Subsections
9 (g) and (h) to read as follows:

10 (e) In a proceeding to remove a county attorney who is not a
11 prosecuting attorney from office, the district attorney shall
12 represent the state. If the county does not have a district
13 attorney, the county attorney from an adjoining county, as selected
14 by the commissioners court of the county in which the proceeding is
15 pending, shall represent the state.

16 (f) In a proceeding to remove a prosecuting attorney [~~the~~
17 ~~county attorney or district attorney~~] from office, the presiding
18 judge of the administrative judicial region in which the petition
19 for removal was filed shall appoint a prosecuting [~~the county~~]
20 attorney from another judicial district or county, as applicable,
21 in the administrative judicial region to [~~from an adjoining county,~~
22 ~~as selected by the commissioners court of the county in which the~~
23 ~~proceeding is pending, shall~~] represent the state [~~if the attorney~~
24 ~~who would otherwise represent the state under this section is also~~
25 ~~the subject of a pending removal proceeding~~].

26 (g) In a proceeding to remove a prosecuting attorney from
27 office, a prosecuting attorney's public statement establishing

1 that the prosecuting attorney adopted or enforced or intends to
2 adopt or enforce a policy described by Section 87.011(3)(B) or
3 permitted or intends to permit an attorney who is employed by or
4 otherwise under the direction or control of the prosecuting
5 attorney to act as described by Section 87.011(3)(C) creates a
6 rebuttable presumption that the prosecuting attorney committed
7 official misconduct.

8 (h) In a trial in which a prosecuting attorney is accused of
9 committing official misconduct under Section 87.011(3)(B) or (C), a
10 court may award reasonable attorney's fees and costs the
11 prosecuting attorney personally spent related to the conduct of the
12 proceeding on finding that the prosecuting attorney did not adopt
13 or enforce a policy described by Section 87.011(3)(B) or permit an
14 attorney who is employed by or otherwise under the direction or
15 control of the prosecuting attorney to act as described by Section
16 87.011(3)(C), as applicable.

17 SECTION 6. The changes in law made by this Act apply only to
18 an action taken or public statement made by a prosecuting attorney
19 on or after the effective date of this Act.

20 SECTION 7. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I certify that H.B. No. 17 was passed by the House on April 28, 2023, by the following vote: Yeas 97, Nays 51, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 17 on May 23, 2023, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 17 on May 28, 2023, by the following vote: Yeas 83, Nays 58, 2 present, not voting.

Chief Clerk of the House

H.B. No. 17

I certify that H.B. No. 17 was passed by the Senate, with amendments, on May 19, 2023, by the following vote: Yeas 20, Nays 11; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 17 on May 28, 2023, by the following vote: Yeas 20, Nays 11.

Secretary of the Senate

APPROVED: _____

Date

Governor