

**House Bill 17**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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;

SENATE VERSION (CS)

SECTION 1. Subchapter B, Chapter 87, Local Government Code, is amended by adding Section 87.0135 to read as follows:

Sec. 87.0135. OFFICIAL MISCONDUCT GROUNDS: POLICY OF NONENFORCEMENT OF CRIMINAL OFFENSES. (a) In this section:

(1) "Policy" includes an instruction or directive expressed in any manner.

(2) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

(b) A prosecuting attorney may not adopt or enforce a policy under which the prosecuting attorney refuses to prosecute a class or type of criminal offense for any reason other than to comply with an injunction, judgment, or order issued by a court.

(c) In compliance with Subsection (b), a prosecuting attorney may not permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to refuse to prosecute a class or type of criminal offense for any reason other than to comply with an injunction, judgment, or order issued by a court.

(d) A prosecuting attorney who violates this section commits official misconduct for purposes of removal under this subchapter.

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(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 state law; or  
(iv) to require supervisory review or the presentation of certain specified evidence before prosecution is authorized.  
(4) "Policy" means an instruction or directive expressed in any manner.  
(5) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

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

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

(b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state 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

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occurred and who is not currently charged with a criminal offense other than a Class C misdemeanor in that county. At least one of the parties who files the petition must swear to it at or before the filing.

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

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

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

(b) On receiving a petition for removal of a prosecuting attorney under Subsection (a), the presiding judge of the administrative judicial region shall 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.

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

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

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

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

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

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

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.

SENATE VERSION (CS)

**No equivalent provision.**

SECTION 2. Same as House version.

CONFERENCE