

BILL ANALYSIS

Senate Research Center
89S10427 JCG-D

S.B. 11
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State Affairs
7/21/2025
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Supreme Court of Texas (supreme court) found in the *Stephens* case that the "attorney general is not required by law to prosecute election law violations." The supreme court held that Article IV, Section 22 of the Texas Constitution states that the attorney general shall perform other duties "as may be required by law." But the Election Code does not require the attorney general to initiate prosecution for an Election Code violation. Therefore, the *Stephens* case held that while the attorney general can prosecute with the permission of the local prosecutor, he cannot initiate prosecution unilaterally.

S.B. 11 would change this "may" to a "shall" and would give the attorney general the power to prosecute election crimes if no proceedings have begun on these crimes after six months have passed.

Under this bill, local law enforcement that would normally submit reports of probable cause of these crimes to a local prosecuting attorney must also submit these reports to the attorney general. In addition, upon request of the attorney general, the local prosecuting attorney or law enforcement must also turn over all information regarding their criminal investigations on these offenses.

As proposed, S.B. 11 amends current law relating to the authority of the attorney general to prosecute criminal offenses prescribed by the election laws of this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 402, Government Code, by adding Subchapter E, as follows:

SUBCHAPTER E. PROSECUTION OF CRIMINAL OFFENSES PRESCRIBED BY STATE ELECTION LAWS

Sec. 402.121. **APPLICABILITY.** Provides that this subchapter applies to a criminal offense under the Election Code.

Sec. 402.122. **PROVISION OF INFORMATION TO ATTORNEY GENERAL.** (a) Requires a law enforcement agency that submits to a local prosecuting attorney a report stating there is probable cause to believe an identified person has committed a criminal offense described by Section 402.121 to simultaneously submit a copy of that report to the attorney general.

(b) Requires a local prosecuting attorney or law enforcement agency, on request of the attorney general, to provide all information requested regarding investigations of criminal offenses described by Section 402.121 to assist the attorney general in performing duties required under this subchapter.

Sec. 402.123. PROSECUTION. Provides that the attorney general, notwithstanding any other law, has jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense described by Section 402.121 if a law enforcement agency submits a report described by Section 402.122(a) to the local prosecuting attorney and the attorney general and six months have elapsed from the date the report was submitted and the local prosecuting attorney has not initiated proceedings to prosecute the offense.

SECTION 2. Amends Sections 273.021(a) and (b), Election Code, as follows:

(a) Provides that the attorney general has jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense prescribed by the election laws of this state as provided by Subchapter E, Chapter 402, Government Code. Deletes existing text authorizing the attorney general to prosecute a criminal offense prescribed by the election laws of this state.

(b) Authorizes the attorney general to appear before a grand jury in connection with a criminal offense, rather than in connection with an offense, the attorney general is authorized to prosecute under Subsection (a).

SECTION 3. Amends Section 273.022, Election Code, to make a conforming change.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: the 91st day after the last day of the legislative session.