

BILL ANALYSIS

S.B. 12
By: Hughes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In *State v. Stephens* (2021), the Texas Court of Criminal Appeals held that current Election Code provisions authorizing the attorney general to prosecute election law violations were invalid. Several state statutes authorize the attorney general to prosecute specified types of criminal cases with the consent of the local prosecutor. As state senators argued in an amicus brief filed with the court urging it to rehear *Stephens*, "[a]s an elected official, a [local] district attorney may have challenges prosecuting members of the district in a highly politicized environment." State representatives (with others) noted in an amicus brief urging rehearing that the Fifth Court of Appeals recognized in its decision in *Medrano v. State* (2014), that there may be "politically sensitive cases in which it is advisable for the Attorney General to step in because local prosecutors might be discouraged from acting." Thus, the attorney general's lack of jurisdiction can pose threats to election integrity, especially when local prosecutors decline to prosecute Election Code violations. S.B. 12 seeks to resolve this issue by granting the attorney general the power to prosecute election crimes independently of local prosecutors.

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

S.B. 12 amends the Government Code to require a law enforcement agency to submit to the attorney general any report stating there is probable cause to believe an identified person has committed a criminal offense under the Election Code. The bill requires a local prosecuting attorney or law enforcement agency to provide any information requested by the attorney general regarding investigations of criminal offenses under the Election Code to assist the attorney general in prosecuting such offenses. The bill establishes that, notwithstanding any other law, the attorney general has jurisdiction to prosecute and requires the attorney general to represent the state in the prosecution of a criminal offense under the Election Code.

S.B. 12 amends the Election Code to replace the authorization for the attorney general to prosecute a criminal offense prescribed by state election laws with a provision establishing that the attorney general has the jurisdiction to prosecute and is required to represent the state in the prosecution of a criminal offense prescribed by such laws as provided by the bill's provisions.

S.B. 12 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes,

an offense was committed before the bill's effective date if any element of the offense occurred before that date.

EFFECTIVE DATE

91st day after the last day of the legislative session.