

## **BILL ANALYSIS**

Senate Research Center  
89R13419 BCH-F

S.B. 1367  
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State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The legislature has chosen to provide the attorney general with jurisdiction to prosecute certain crimes, either with original jurisdiction or with concurrent jurisdiction with county and district attorneys. The Court of Criminal Appeals, however, held in *State v. Stephens*, that prosecution of these crimes are a judicial branch function and that the attorney general, as an official in the executive branch, cannot prosecute certain crimes without being invited to participate by the local prosecutor.

Over the last several years, several Texas county and/or district attorneys have announced that they refuse to prosecute certain classes of crimes. In the absence of any prosecutor to bring charges for crimes that state law prohibits, the state has a responsibility to provide for enforcement.

The state already has an office of the state prosecuting attorney, which is a legislatively created office situated in the judicial branch. The state prosecuting attorney is already authorized to represent the state in any stage of a criminal case before the Court of Criminal Appeals or a court of appeals in this state.

S.B. 1927 would expand this existing office to prosecute election crimes statewide at any stage of a criminal case. Such crimes are likely to be politicized such that some prosecutors will have an incentive to avoid prosecuting the crimes based on factors other than the evidence and the legality of the charged conduct. The bill also moves oversight of the office from the Court of Criminal Appeals to the Supreme Court.

By providing concurrent jurisdiction to a statewide prosecutor in the judicial branch, the state will have an opportunity to ensure that the law is enforced without political consideration.

As proposed, S.B. 1367 amends current law relating to the appointment, duties, and removal of the state prosecuting attorney.

### **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 the heading to Section 42.001, Government Code, to read as follows:

Sec. 42.001. OFFICE; DUTIES; QUALIFICATIONS.

SECTION 2. Amends Section 42.001, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the Supreme Court of Texas, rather than the Texas Court of Criminal Appeals (court of criminal appeals), to appoint a state prosecuting attorney.

(a-1) Creates this subsection from existing text. Provides that the state prosecuting attorney is:

(1) required to represent the state in all proceedings before the court of criminal appeals;

(2) authorized to represent the state in any stage of a criminal case before a state court of appeals if the attorney considers it necessary for the interest of the state; and

(3) authorized to exercise concurrent jurisdiction to represent the state in the district and inferior courts in this state in a criminal case in which the criminal conduct alleged relates to a violation of this state's election laws.

Makes nonsubstantive changes to this subsection.

SECTION 3. Amends Section 42.004, Government Code, as follows:

Sec. 42.004. REMOVAL. Makes a conforming change to this section.

SECTION 4. Makes application of this Act prospective.

SECTION 5. (a) Provides that, notwithstanding any other section of this Act, in a state fiscal year, the state prosecuting attorney is not required to implement a mandatory provision in another section of this Act imposing a duty on the state prosecuting attorney to take an action unless money is specifically appropriated to the state prosecuting attorney for that fiscal year to carry out that duty. Authorizes the state prosecuting attorney to implement the provision in that fiscal year to the extent other funding is available to the state prosecuting attorney for the implementation.

(b) Requires the state prosecuting attorney, in the state prosecuting attorney's legislative budget request for the next state fiscal biennium, if, as authorized by Subsection (a) of this section, the state prosecuting attorney does not implement the mandatory provision in a state fiscal year, to certify that fact to the Legislative Budget Board and include a written estimate of the costs of implementing the provision in each year of that next state fiscal biennium.

(c) Provides that this section expires and any duty suspended by Subsection (a) of this section becomes mandatory on September 1, 2029.

SECTION 6. Effective date: September 1, 2025.