

# STATE OF NEW YORK

4878

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

Introduced by M. of A. PERRY, MOSLEY, GOTTFRIED, GANTT, COOK, PRETLOW, PEOPLES-STOKES, ROSENTHAL, CRESPO, WEPRIN, MOYA, RODRIGUEZ, QUART, KIM, PICHARDO, WALKER, BARRON, SEAWRIGHT, JOYNER, BLAKE -- Multi-Sponsored by -- M. of A. CARROLL, DAVILA, ORTIZ, SIMON -- read once and referred to the Committee on Codes

AN ACT to amend the executive law and the criminal procedure law, in relation to establishing the office of special investigation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 70-b  
2 to read as follows:

3 § 70-b. Office of special investigation. 1. There shall be estab-  
4 lished within the department of law an office of special investigation  
5 which shall have the power to investigate and prosecute any alleged  
6 criminal offense or offenses committed by a police officer as defined in  
7 subdivision thirty-four of section 1.20 of the criminal procedure law,  
8 or a peace officer as defined in subdivision thirty-three of section  
9 1.20 of the criminal procedure law, concerning the death of any person  
10 that resulted from or potentially resulted from injuries that occurred  
11 or may have occurred as a result of any encounter with such police offi-  
12 cer or peace officer. The office shall conduct such an investigation and  
13 may conduct such a prosecution upon its written finding that such is  
14 appropriate because: (i) there is a lack of alternative prosecutorial  
15 resources to adequately investigate and prosecute such criminal offense  
16 or offenses; (ii) such investigation and prosecution cannot be effec-  
17 tively conducted by the district attorney of the county wherein the  
18 offense or a portion thereof is alleged to have been committed; (iii)  
19 the district attorney has failed or refused to effectively conduct such  
20 investigation and prosecution; or (iv) the exercise of such jurisdiction  
21 is necessary to ensure the confidence of the public in the criminal  
22 justice system and judicial system. The office of special investigation

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 within the department of law shall be headed by the deputy attorney  
2 general appointed by the attorney general pursuant to subdivision three  
3 of this section.

4 2. In all proceedings pursuant to subdivision one of this section, the  
5 deputy attorney general, appointed pursuant to subdivision three of this  
6 section, may appear in person or by any assistant attorney general he or  
7 she may designate before any court or grand jury in the state and exer-  
8 cise all of the powers and perform all of the duties with respect to  
9 such actions or proceedings which the district attorney would otherwise  
10 be authorized or required to exercise or perform.

11 3. Notwithstanding any other provision of law, the attorney general  
12 shall, without civil service examination, appoint and employ, fix his or  
13 her compensation, and at his or her pleasure remove, a deputy attorney  
14 general in charge of the office of special investigation. The attorney  
15 general may, and without civil service examination, appoint and employ,  
16 and at pleasure remove, such assistant deputies, investigators and other  
17 persons as he or she deems necessary, determine their duties and fix  
18 their compensation.

19 4. (a) Where an investigation or prosecution of the type described in  
20 subdivision one of this section involves acts that appear to have been  
21 engaged in by a police officer or peace officer employed by the state of  
22 New York, the attorney general shall promptly apply to a superior court  
23 in the county in which such acts allegedly occurred for the appointment  
24 of a special assistant attorney general to investigate and potentially  
25 prosecute such matter. Notwithstanding the provisions of any other law,  
26 such court shall thereupon appoint a qualified attorney at law having an  
27 office in or residing in such county or an adjoining county, not  
28 employed as a district attorney or assistant district attorney, and  
29 having no personal or professional conflicts of interest, to act as a  
30 special assistant attorney general with respect to such matter, at a  
31 reasonable and appropriate hourly rate to be set by such court.

32 (b) The attorney general shall promptly notify the state comptroller  
33 and the court when such appointment has been made and accepted by such  
34 attorney. Reasonable fees for attorneys and investigation and liti-  
35 gation expenses shall be paid by the state to such private counsel from  
36 time to time during the pendency of the investigation and any prose-  
37 cution and appeal, upon the audit and warrant of the comptroller. Any  
38 dispute with respect to the payment of such fees and expenses shall be  
39 resolved by the court upon motion or by way of a special proceeding.

40 (c) The deputy attorney general appointed pursuant to this subdivision  
41 may appear in person or by any special assistant deputy attorney general  
42 he or she may designate before any court or grand jury in the state and  
43 exercise all of the powers and perform all of the duties with respect to  
44 such actions or proceedings which the district attorney would otherwise  
45 be authorized or required to exercise or perform.

46 § 2. Subdivision 6 of section 190.25 of the criminal procedure law is  
47 amended to read as follows:

48 6. (a) The legal advisors of the grand jury are the court and the  
49 district attorney, and the grand jury may not seek or receive legal  
50 advice from any other source. Where necessary or appropriate, the court  
51 or the district attorney, or both, must instruct the grand jury concern-  
52 ing the law with respect to its duties or any matter before it, and such  
53 instructions must be recorded in the minutes.

54 (b) Notwithstanding paragraph (a) of this subdivision, or any other  
55 law to the contrary, in any proceeding before a grand jury that involves  
56 the submission of a criminal charge or charges against a person or

1 persons for an act or acts that occurred at a time when such person was  
2 a police officer or peace officer, and that concern the death of any  
3 person that resulted from or potentially resulted from injuries that  
4 occurred or may have occurred as a result of any encounter with such  
5 police officer or peace officer, the court, after consultation on the  
6 record with the district attorney, shall instruct the grand jury as to  
7 the criminal charge or charges to be submitted and the law applicable to  
8 such charges and to the matters before such grand jury. Thereafter, any  
9 questions, requests for exhibits, requests for readback of testimony or  
10 other requests from the grand jury or a member thereof shall be provided  
11 to the court, and addressed by the court after consultation on the  
12 record with the district attorney.

13 (c) Notwithstanding the provisions of subdivision four of this  
14 section, or any other law to the contrary, following final action by the  
15 grand jury on the charge or charges submitted pursuant to paragraph (b)  
16 of this subdivision, the court shall make such legal instructions and  
17 charges submitted to such grand jury available to the public on request,  
18 provided that the names of witnesses and any information that would  
19 identify such witnesses included in such legal instructions or charges  
20 shall be redacted when the court determines, in a written order released  
21 to the public, and issued after notice to the people and the requester  
22 and an opportunity to be heard and reasonable efforts to notify and  
23 provide an opportunity to be heard to any other appropriate person or  
24 agency, that there is a reasonable likelihood that public release of  
25 such information would endanger any individual.

26 (d) Nothing in this paragraph or paragraphs (b) or (c), of this subdi-  
27 vision shall be interpreted as limiting or restricting any broader right  
28 of access to grand jury materials under any other law, common law or  
29 court precedent.

30 § 3. This act shall take effect on the thirtieth day after it shall  
31 have become a law.