

STATE OF NEW YORK

9168

IN SENATE

September 17, 2018

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 investigate and, if warranted, prosecute any alleged crimi-
6 nal offense or offenses committed by a person who is a police officer as
7 defined in subdivision thirty-four of section 1.20 of the criminal
8 procedure law, or a peace officer as defined in subdivision thirty-three
9 of section 1.20 of the criminal procedure law, concerning the death, or
10 the investigation of the death, of any person where such death resulted
11 from or potentially resulted from any encounter with such police officer
12 or peace officer, whether or not such person was in custody. The office
13 shall have the powers and duties specified in subdivisions two and eight
14 of section sixty-three of this article for purposes of this section, and
15 shall possess and exercise all the prosecutorial powers necessary to
16 investigate and, if warranted, prosecute such offenses, provided, howev-
17 er, that approval, direction or requirement of the governor as may
18 otherwise be required by such subdivisions shall not be required. The
19 jurisdiction of the office of special investigation shall displace and
20 supersede in all ways the authority and jurisdiction of the county
21 district attorney for the investigation and prosecution of such
22 offenses. In any investigation and prosecution conducted pursuant to
23 this section, the district attorney shall only exercise such powers and
24 perform such duties as designated to him or her by the office of special
25 investigation. The office of special investigation within the department
26 of law shall be headed by the deputy attorney general appointed by the
27 attorney general pursuant to subdivision three of this section.

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

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1 2. (a) In any investigation and prosecution undertaken pursuant to
2 this section, the office of special investigation shall conduct a full,
3 reasoned, and independent investigation including, but not limited to:
4 (i) gathering and analyzing evidence; (ii) conducting witness inter-
5 views; and (iii) reviewing and commissioning any necessary investigative
6 and scientific reports, and reviewing audio and video recordings.

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

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

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

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

44 (c) In all matters pursuant to subdivision one of this section, the
45 independent counsel appointed pursuant to this subdivision shall possess
46 and exercise the powers and duties of the office of special investi-
47 gation pursuant to subdivisions one and two of this section, and may
48 appear in person or by any assistant independent counsel he or she may
49 designate before any court or grand jury in the state and exercise all
50 of the powers and perform all of the duties with respect to such actions
51 or proceedings which the district attorney would otherwise be authorized
52 or required to exercise or perform.

53 5. (a) With respect to any investigation pursuant to this section, the
54 office of special investigation or the independent counsel, as the case
55 may be, shall, as a part of the duties under this section, prepare and
56 publicly release a report on all cases where: (i) the office or inde-

1 pendent counsel, as the case may be, declines to present evidence to a
2 grand jury regarding the death of a person as described in subdivision
3 one of this section; or (ii) the grand jury declines to return an
4 indictment on any felony charges.

5 (b) The report shall include: (i) with respect to subparagraph (i) of
6 paragraph (a) of this subdivision, an explanation as to why such office
7 or independent counsel declined to present evidence to a grand jury;
8 (ii) with respect to subparagraph (ii) of paragraph (a) of this subdivi-
9 sion, a report of the outcome of the grand jury proceedings and, to the
10 greatest extent possible, an explanation of that outcome; and (iii) any
11 recommendations for systemic or other reforms arising from the investi-
12 gation.

13 6. Six months after this subdivision takes effect, and annually on
14 such date thereafter, the office of special investigation shall issue a
15 report, which shall be made available to the public and posted on the
16 website of the department of law, which shall provide information on the
17 matters investigated by such office, and by independent counsel
18 appointed pursuant to subdivision four of this section, during such
19 reporting period. The information presented shall include, but not be
20 limited to: the county and geographic location of each matter investi-
21 gated; a description of the circumstances of each case; racial, ethnic,
22 age, gender and other demographic information concerning the persons
23 involved or alleged to be involved; information concerning whether a
24 criminal charge or charges were filed against any person involved or
25 alleged to be involved in such matter; the nature of such charges; and
26 the status or, where applicable, outcome with respect to all such crimi-
27 nal charges. Such report shall also include recommendations for any
28 systemic or other reforms recommended as a result of such investi-
29 gations.

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

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

38 (b) Notwithstanding paragraph (a) of this subdivision, or any other
39 law to the contrary, in any proceeding before a grand jury that involves
40 the submission of a criminal charge or charges against a person or
41 persons for an act or acts that occurred at a time when such person was
42 a police officer or peace officer, and that concern the death of any
43 person that resulted from or potentially resulted from any encounter
44 with such police officer or peace officer, the court, after consultation
45 on the record with the prosecutor, shall instruct the grand jury as to
46 the criminal charge or charges to be submitted and the law applicable to
47 such charges and to the matters before such grand jury. Thereafter, any
48 questions, requests for exhibits, requests for readback of testimony or
49 other requests from the grand jury or a member thereof shall be provided
50 to the court, and addressed by the court after consultation on the
51 record with the prosecutor.

52 (c) Notwithstanding the provisions of subdivision four of this
53 section, or any other law to the contrary, following final action by the
54 grand jury on the charge or charges submitted pursuant to paragraph (b)
55 of this subdivision, the court shall make such legal instructions and
56 charges submitted to such grand jury available to the public on request,

1 provided that the names of witnesses and any information that would
2 identify such witnesses included in such legal instructions or charges
3 shall be redacted when the court determines, in a written order released
4 to the public, and issued after notice to the people and the requester
5 and an opportunity to be heard and reasonable efforts to notify and
6 provide an opportunity to be heard to any other appropriate person or
7 agency, that there is a reasonable likelihood that public release of
8 such information would endanger any individual.

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

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