

# STATE OF NEW YORK

1601--C

2019-2020 Regular Sessions

## IN ASSEMBLY

January 15, 2019

Introduced by M. of A. PERRY, MOSLEY, GOTTFRIED, GANTT, COOK, PRETLOW, PEOPLES-STOKES, L. ROSENTHAL, CRESPO, WEPRIN, RODRIGUEZ, QUART, KIM, PICHARDO, WALKER, BARRON, SEAWRIGHT, JOYNER, BLAKE, JAFFEE, ABINANTI, D'URSO, JEAN-PIERRE, HYNDMAN, NIOU, TAYLOR, VANEL, RIVERA, ARROYO, ZEBROWSKI, FRONTUS, CRUZ, AUBRY, FERNANDEZ, DE LA ROSA, EPSTEIN, REYES, RICHARDSON, O'DONNELL, SIMOTAS, SIMON, ROZIC, HUNTER, WRIGHT, ORTIZ, OTIS, LENTOL, DenDEKKER, BARNWELL, BICHOTTE, GLICK, MAGNARELLI, DAVILA, STECK -- Multi-Sponsored by -- M. of A. CARROLL -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to creating an office of special investigation within the office of the attorney general

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 established  
4 within the office of the attorney general an office of special investi-  
5 gation. Notwithstanding any other provision of law, the office of  
6 special investigation shall investigate and, if warranted, prosecute any  
7 alleged criminal offense or offenses committed by a person, whether or  
8 not formally on duty, who is a police officer, as defined in subdivision  
9 thirty-four of section 1.20 of the criminal procedure law, or a peace  
10 officer as defined in section 2.10 of the criminal procedure law,  
11 provided that such peace officer is employed or contracted by an educa-

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

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1 tion, public health, social service, parks, housing or corrections agen-  
2 cy, or is a peace officer as defined in subdivision twenty-five of  
3 section 2.10 of the criminal procedure law, concerning any incident in  
4 which the death of a person, whether in custody or not, is caused by an  
5 act or omission of such police officer or peace officer or in which the  
6 attorney general determines there is a question as to whether the death  
7 was in fact caused by an act or omission of such police officer or peace  
8 officer.

9 2. The attorney general has investigative authority and criminal  
10 jurisdiction under this section at the time of the death of the person  
11 and the attorney general retains investigative authority and criminal  
12 jurisdiction over the incident unless the attorney general determines  
13 that such incident does not meet the requirements of this section. If  
14 the attorney general determines the incident does not meet the require-  
15 ments for the attorney general to have investigative authority and crim-  
16 inal jurisdiction pursuant to this section, the attorney general shall,  
17 as soon as practicable, provide written notice of such determination to  
18 the district attorney for the county in which the incident occurred.

19 3. In connection with any particular incident encompassed by this  
20 section, the attorney general shall conduct a full, reasoned and inde-  
21 pendent investigation, including but not limited to: (a) gathering and  
22 analyzing evidence; (b) conducting witness interviews; (c) reviewing and  
23 commissioning any necessary investigative and scientific reports; and  
24 (d) reviewing audio and video-recordings. The attorney general shall be  
25 empowered to subpoena witnesses, compel their attendance, examine them  
26 under oath before himself or herself or a magistrate and require that  
27 any books, records, documents or papers relevant or material to the  
28 inquiry be turned over to him or her for inspection, examination or  
29 audit, pursuant to the civil practice law and rules, in connection with  
30 such incident.

31 4. The attorney general shall have criminal jurisdiction over any  
32 criminal conduct arising from any incident herein, and shall exercise  
33 all of the powers and perform all of the duties with respect to such  
34 actions or proceedings that a district attorney would otherwise be  
35 authorized or required to exercise or perform, including all the powers  
36 necessary to prosecute acts and omissions and alleged acts and omissions  
37 to obstruct, hinder or interfere with any inquiry, prosecution, trial or  
38 judgment arising from the incident. The criminal jurisdiction of the  
39 office of special investigation shall displace and supersede the juris-  
40 isdiction of the district attorney where the incident occurred; and such  
41 district attorney shall only have the powers and duties reserved to him  
42 or her in writing by the attorney general.

43 5. The attorney general shall designate a deputy attorney general for  
44 special investigation to exercise the powers and duties of the office of  
45 special investigation, who shall be in the exempt class of the civil  
46 service. The deputy attorney general may designate deputies or assist-  
47 ants, who shall be in the exempt class of the civil service, as neces-  
48 sary and appropriate. The other employees of the office of special  
49 investigation within the department of law, who are not otherwise  
50 exempt, shall all be in the competitive class of the civil service and  
51 shall be considered for purposes of article fourteen of the civil  
52 service law to be public employees in the civil service of the state,  
53 and shall be assigned to the appropriate collective bargaining unit.  
54 Employees serving in positions in newly created titles shall be assigned  
55 to the same collective bargaining units as they would have been assigned  
56 to were such titles created prior to the establishment of the office of

1 special investigation within the department of law by this chapter. The  
2 deputy attorney general for special investigation may appear and conduct  
3 proceedings in person or by his or her deputy or assistant before any  
4 court or grand jury in connection with proceedings under this section.

5 6. (a) For any incident under this section, the office of special  
6 investigation shall issue a public report and post the report on its  
7 website whenever the office of special investigation initiates an inves-  
8 tigation and (i) the office of special investigation declines to present  
9 evidence to a grand jury or (ii) the office of special investigation  
10 does present evidence to a grand jury but the grand jury declines to  
11 return indictment on any charges. The report will include, to the extent  
12 possible and lawful, the results of the investigation of the incident.

13 (b) The report shall also include: (i) with respect to subparagraph  
14 (i) of paragraph (a) of this subdivision, an explanation as to why the  
15 office of special investigation declined to present evidence to a grand  
16 jury; and (ii) any recommendations for systemic or other reforms arising  
17 from the investigation.

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

33 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
34 sion, section or part of this act shall be adjudged by any court of  
35 competent jurisdiction to be invalid, such judgment shall not affect,  
36 impair, or invalidate the remainder thereof, but shall be confined in  
37 its operation to the clause, sentence, paragraph, subdivision, section  
38 or part thereof directly involved in the controversy in which such judg-  
39 ment shall have been rendered. It is hereby declared to be the intent of  
40 the legislature that this act would have been enacted even if such  
41 invalid provisions had not been included herein.

42 § 3. This act shall take effect April 1, 2021.