

STATE OF NEW YORK

1601--B

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

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 have investigative authority and criminal
7 jurisdiction of any incident in which the death of a person, whether in
8 custody or not, is caused by 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 subdivision twenty-five of section 2.10 of the
11 criminal procedure law, whether or not formally on duty, or in which the
12 attorney general determines there is a significant question as to wheth-
13 er the death was in fact caused by such police officer or peace officer;

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

LBD05660-07-0

1 provided the office of special investigation shall investigate any death
2 under its jurisdiction of a person who was unarmed at the time of such
3 incident or in which the attorney general determines there is a signif-
4 icant question as to whether the person was in fact armed.

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

15 3. In connection with any particular incident encompassed by this
16 section, the attorney general shall be empowered to subpoena witnesses,
17 compel their attendance, examine them under oath before himself or
18 herself or a magistrate and require that any books, records, documents
19 or papers relevant or material to the inquiry be turned over to him or
20 her for inspection, examination or audit, pursuant to the civil practice
21 law and rules, in connection with such incident.

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

34 5. The attorney general shall designate a deputy attorney general for
35 special investigation to exercise the powers and duties of the office of
36 special investigation, who shall be in the exempt class of the civil
37 service. The deputy attorney general may designate deputies or assist-
38 ants, who shall be in the exempt class of the civil service, as neces-
39 sary and appropriate. The other employees of the office of special
40 investigation within the department of law, who are not otherwise
41 exempt, shall all be in the competitive class of the civil service and
42 shall be considered for purposes of article fourteen of the civil
43 service law to be public employees in the civil service of the state,
44 and shall be assigned to the appropriate collective bargaining unit.
45 Employees serving in positions in newly created titles shall be assigned
46 to the same collective bargaining units as they would have been assigned
47 to were such titles created prior to the establishment of the office of
48 special investigation within the department of law by this chapter. The
49 deputy attorney general for special investigation may appear and conduct
50 proceedings in person or by his or her deputy or assistant before any
51 court or grand jury in connection with proceedings under this section.

52 6. For any incident under this section, the office of special investi-
53 gation shall issue a public report and post the report on its website
54 whenever the office of special investigation initiates an investigation
55 and (i) the office of special investigation declines to present evidence
56 to a grand jury or (ii) the office of special investigation does present

1 evidence to a grand jury but the grand jury declines to return indict-
2 ment on any charges. The report will include, to the extent possible and
3 lawful, the results of the investigation of the incident.

4 7. Six months after this subdivision takes effect, and annually on
5 such date thereafter, the office of special investigation shall issue a
6 report, which shall be made available to the public and posted on the
7 website of the department of law, which shall provide information on the
8 matters investigated by such office during such reporting period. The
9 information presented shall include, but not be limited to: the county
10 and geographic location of each matter investigated; a description of
11 the circumstances of each case; racial, ethnic, age, gender and other
12 demographic information concerning the persons involved or alleged to be
13 involved; information concerning whether a criminal charge or charges
14 were filed against any person involved or alleged to be involved in such
15 matter; the nature of such charges; and the status or, where applicable,
16 outcome with respect to all such criminal charges. Such report shall
17 also include recommendations for any systemic or other reforms recom-
18 mended as a result of such investigations.

19 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
20 sion, section or part of this act shall be adjudged by any court of
21 competent jurisdiction to be invalid, such judgment shall not affect,
22 impair, or invalidate the remainder thereof, but shall be confined in
23 its operation to the clause, sentence, paragraph, subdivision, section
24 or part thereof directly involved in the controversy in which such judg-
25 ment shall have been rendered. It is hereby declared to be the intent of
26 the legislature that this act would have been enacted even if such
27 invalid provisions had not been included herein.

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