

STATE OF NEW YORK

2189

2019-2020 Regular Sessions

IN SENATE

January 23, 2019

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

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

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

16 4. (a) Where an investigation or prosecution of the type described in
17 subdivision one of this section involves acts that appear to have been
18 engaged in by a police officer or peace officer employed by the state of
19 New York, the attorney general shall promptly apply to a superior court
20 in the county in which such acts allegedly occurred for the appointment
21 of a special assistant attorney general to investigate and potentially
22 prosecute such matter. Notwithstanding the provisions of any other law,
23 such court shall thereupon appoint a qualified attorney at law having an
24 office in or residing in such county or an adjoining county, not
25 employed as a district attorney or assistant district attorney, to act
26 as a special assistant attorney general with respect to such matter, at
27 a reasonable and appropriate hourly rate to be set by such court.

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

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

42 § 2. Paragraph (d) of subdivision 3 of section 190.25 of the criminal
43 procedure law is amended and a new paragraph (a-1) is added to read as
44 follows:

45 (a-1) a judge or justice of the superior court;

46 (d) An interpreter. Upon request of the grand jury or the court, the
47 prosecutor must provide an interpreter to interpret the testimony of any
48 witness who does not speak the English language well enough to be readi-
49 ly understood. Such interpreter must, if he or she has not previously
50 taken the constitutional oath of office, first take an oath before the
51 grand jury that he or she will faithfully interpret the testimony of the
52 witness and that he or she will keep secret all matters before such
53 grand jury within his or her knowledge;

54 § 3. Subdivision 6 of section 190.25 of the criminal procedure law is
55 amended and a new subdivision 4-a is added to read as follows:

1 4-a. (a) Notwithstanding the provisions of subdivision four of this
2 section, when, following submission to a grand jury of a criminal charge
3 or charges, the grand jury dismisses all charges presented or directs
4 the district attorney to file in a local criminal court a prosecutor's
5 information charging an offense other than a felony, as provided in
6 subdivision one of section 190.70 of this article, an application may be
7 made to the superior court for disclosure of the following material
8 relating to the proceedings before such grand jury:

9 (i) the criminal charge or charges submitted;

10 (ii) the legal instructions provided to the grand jury;

11 (iii) the testimony of all public servants who testified in an offi-
12 cial capacity before the grand jury and of all persons who provided
13 expert testimony; and

14 (iv) the testimony of all other persons who testified before the grand
15 jury, redacted as necessary to prevent discovery of their names and such
16 other personal data or information that may reveal or help to reveal
17 their identities.

18 (b) The application specified in paragraph (a) of this subdivision may
19 be made by any person, must be in writing and, except where made by the
20 people, must be upon notice to the people. The court shall direct or
21 provide notice to any other appropriate person or agency. Where more
22 than one application is made hereunder in relation to such a dismissal
23 or direction, the court may consolidate such applications and determine
24 them together. When no application hereunder is made, the superior court
25 may order disclosure on its own motion as provided in paragraph (c) of
26 this subdivision at any time following notice to the people and an
27 opportunity to be heard and reasonable efforts to notify and provide an
28 opportunity to be heard to any other appropriate person or agency.

29 (c) Upon an application as provided in paragraph (a) of this subdivi-
30 sion or on the court's own motion, the court, after providing persons
31 given notice an opportunity to be heard, shall determine whether:

32 (i) a significant number of members of the general public in the coun-
33 ty in which the grand jury was drawn and impaneled are likely aware that
34 a criminal investigation had been conducted in connection with the
35 subject matter of the grand jury proceeding; and

36 (ii) a significant number of members of the general public in such
37 county are likely aware of the identity of the subject against whom the
38 criminal charge specified in paragraph (a) of this subdivision was
39 submitted to a grand jury, or such subject has consented to such disclo-
40 sure; and

41 (iii) there is significant public interest in disclosure.

42 Where the court is satisfied that all three of these factors are pres-
43 ent, and except as provided in paragraph (d) of this subdivision, the
44 court shall direct the district attorney to disclose the items specified
45 in paragraph (a) of this subdivision.

46 (d) Notwithstanding any other provisions of this subdivision, on
47 application of the district attorney or any interested person, or on its
48 own motion, the court shall limit disclosure of the items specified in
49 paragraph (a) of this subdivision, in whole or part, where the court
50 determines there is a reasonable likelihood that such disclosure may
51 lead to discovery of the identity of a witness who is not a public serv-
52 ant or expert witness, imperil the health or safety of a grand juror who
53 participated in the proceeding or a witness who appeared before the
54 grand jury, jeopardize an identified current or future criminal investi-
55 gation, create a specific threat to public safety, or despite the inter-

1 ests reflected by this subdivision is contrary to the interests of
2 justice.

3 (e) Where a court determines not to direct disclosure pursuant to this
4 subdivision, it shall do so in a written order dismissing the applica-
5 tion therefor that shall explain with specificity, to the extent practi-
6 cable, the basis for its determination.

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

13 (b) Notwithstanding paragraph (a) of this subdivision, or any other
14 law to the contrary, in any proceeding before a grand jury that involves
15 the submission of a criminal charge or charges against a person or
16 persons for an act or acts that occurred at a time when such person was
17 a police officer or peace officer, and that concern the death of any of
18 any person that resulted from or potentially resulted from injuries that
19 occurred or may have occurred as a result of any encounter with such
20 police officer or peace officer, the court, after consultation on the
21 record with the district attorney, shall instruct the grand jury as to
22 the criminal charge or charges to be submitted and the law applicable to
23 such charges and to the matters before such grand jury. Thereafter, any
24 questions, requests for exhibits, requests for readback of testimony or
25 other requests from the grand jury or a member thereof shall be provided
26 to the court, and addressed by the court after consultation on the
27 record with the district attorney.

28 (c) Notwithstanding the provisions of subdivisions four and four-a of
29 this section, following final action by the grand jury on the charge or
30 charges submitted pursuant to paragraph (b) of this subdivision, the
31 court shall make such legal instructions and charges submitted to such
32 grand jury available to the public on request, provided that the names
33 of witnesses and any information that would identify such witnesses
34 included in such legal instructions or charges shall be redacted when
35 the court determines, in a written order released to the public, and
36 issued after notice to the people and the requester and an opportunity
37 to be heard and reasonable efforts to notify and provide an opportunity
38 to be heard to any other appropriate person or agency, that there is a
39 reasonable likelihood that public release of such information would
40 endanger any individual.

41 § 4. This act shall take effect on the thirtieth day after it shall
42 have become a law.