

# STATE OF NEW YORK

2574--A

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sens. BAILEY, BENJAMIN, BIAGGI, HOYLMAN, JACKSON, MONTGOMERY, MYRIE, PARKER, RAMOS, SALAZAR, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

§ 70-b. Office of special investigation. 1. There shall be established within the department of law an office of special investigation which shall investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person who is a police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law, concerning the death, or the investigation of the death, of any person where such death resulted from or potentially resulted from any encounter with such police officer or peace officer, whether or not such person was in custody. The office shall have the powers and duties specified in subdivisions two and eight of section sixty-three of this article for purposes of this section, and shall possess and exercise all the prosecutorial powers necessary to investigate and, if warranted, prosecute such offenses, provided, however, that approval, direction or requirement of the governor as may otherwise be required by such subdivisions shall not be required. The jurisdiction of the office of special investigation shall displace and supersede in all ways the authority and jurisdiction of the county district attorney for the investigation and prosecution of such offenses. In any investigation and prosecution conducted pursuant to

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

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1 this section, the district attorney shall only exercise such powers and  
2 perform such duties as designated to him or her by the office of special  
3 investigation. The office of special investigation within the department  
4 of law shall be headed by the deputy attorney general appointed by the  
5 attorney general pursuant to subdivision three of this section.

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

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

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

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

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

49 (c) In all matters pursuant to subdivision one of this section, the  
50 independent counsel appointed pursuant to this subdivision shall possess  
51 and exercise the powers and duties of the office of special investi-  
52 gation pursuant to subdivisions one and two of this section, and may  
53 appear in person or by any assistant independent counsel he or she may  
54 designate before any court or grand jury in the state and exercise all  
55 of the powers and perform all of the duties with respect to such actions

1 or proceedings which the district attorney would otherwise be authorized  
2 or required to exercise or perform.

3 5. (a) With respect to any investigation pursuant to this section, the  
4 office of special investigation or the independent counsel, as the case  
5 may be, shall, as a part of the duties under this section, prepare and  
6 publicly release a report on all cases where: (i) the office or inde-  
7 pendent counsel, as the case may be, declines to present evidence to a  
8 grand jury regarding the death of a person as described in subdivision  
9 one of this section; or (ii) the grand jury declines to return an  
10 indictment on any felony charges.

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

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

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

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

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

1 to the court, and addressed by the court after consultation on the  
2 record with the prosecutor.

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

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

20 § 3. This act shall take effect on the first of April next succeeding  
21 the date upon which it shall have become a law.