

# STATE OF NEW YORK

2574--B

2019-2020 Regular Sessions

## IN SENATE

January 28, 2019

Introduced by Sens. BAILEY, BENJAMIN, BIAGGI, BRESLIN, CARLUCCI, COMRIE, GIANARIS, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, LIU, MAY, MONTGOMERY, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, 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 -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- 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;  
14 provided the office of special investigation shall investigate any death  
15 under its jurisdiction of a person who was unarmed at the time of such  
16 incident or in which the attorney general determines there is a signif-  
17 icant question as to whether the person was in fact armed.

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

LBD05660-06-0

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

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

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

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

48     6. For any incident under this section, the office of special investi-  
49 gation shall issue a public report and post the report on its website  
50 whenever the office of special investigation initiates an investigation  
51 and (i) the office of special investigation declines to present evidence  
52 to a grand jury or (ii) the office of special investigation does present  
53 evidence to a grand jury but the grand jury declines to return indict-  
54 ment on any charges. The report will include, to the extent possible and  
55 lawful, the results of the investigation of the incident.

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

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

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