STATE OF NEW YORK

2574--C

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 -- 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:

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 office of the attorney general an office of special investigation. Notwithstanding any other provision of law, the office of special investigation shall investigate and, if warranted, prosecute any alleged criminal offense or offenses committed by a person, whether or not formally on duty, 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 section 2.10 of the criminal procedure law, provided that such peace officer is employed or contracted by an education, public health, social service, parks, housing or corrections agency, or is a peace officer as defined in subdivision twenty-five of section 2.10 of the criminal procedure law, concerning any incident in which the death of a person, whether in custody or not, is caused by an act or omission of such police officer or peace officer or in which the attorney general determines there is a question as to whether the death

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

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was in fact caused by an act or omission of such police officer or peace officer.

2. The attorney general has investigative authority and criminal jurisdiction under this section at the time of the death of the person and the attorney general retains investigative authority and criminal jurisdiction over the incident unless the attorney general determines that such incident does not meet the requirements of this section. If the attorney general determines the incident does not meet the requirements for the attorney general to have investigative authority and criminal jurisdiction pursuant to this section, the attorney general shall, as soon as practicable, provide written notice of such determination to the district attorney for the county in which the incident occurred.

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

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

5. The attorney general shall designate a deputy attorney general for special investigation to exercise the powers and duties of the office of special investigation, who shall be in the exempt class of the civil service. The deputy attorney general may designate deputies or assistants, who shall be in the exempt class of the civil service, as necessary and appropriate. The other employees of the office of special investigation within the department of law, who are not otherwise exempt, shall all be in the competitive class of the civil service and shall be considered for purposes of article fourteen of the civil service law to be public employees in the civil service of the state, and shall be assigned to the appropriate collective bargaining unit. Employees serving in positions in newly created titles shall be assigned to the same collective bargaining units as they would have been assigned to were such titles created prior to the establishment of the office of special investigation within the department of law by this chapter. The deputy attorney general for special investigation may appear and conduct proceedings in person or by his or her deputy or assistant before any court or grand jury in connection with proceedings under this section.

6. (a) For any incident under this section, the office of special investigation shall issue a public report and post the report on its

website whenever the office of special investigation initiates an investigation and (i) the office of special investigation declines to present evidence to a grand jury or (ii) the office of special investigation does present evidence to a grand jury but the grand jury declines to return indictment on any charges. The report will include, to the extent possible and lawful, the results of the investigation of the incident.

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

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

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

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