STATE OF NEW YORK

5188

2021-2022 Regular Sessions

IN SENATE

February 26, 2021

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT in relation to appointing a special prosecutor to investigate and prosecute matters involving the death of an unarmed civilian caused by a law enforcement officer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. 1. The governor, by and with the advice and consent of the senate, shall within 30 days of the effective date of this act appoint a special prosecutor to investigate and prosecute any death of an unarmed civilian caused by a police officer, as defined in subdivision 34 of section 1.20 of the criminal procedure law. The special prosecutor shall serve for a term of 3 years unless removed by the governor, after notice and an opportunity for a hearing, and then only for one or more of the following reasons: permanent disability which renders the special prosecutor incapable of performing the duties of his or her office; gross inefficiency, typified by a lack of ability to properly conduct investigations and prosecutions; neglect of duty; malfeasance; conviction of a felony; or conduct involving moral turpitude.

2. Such special prosecutor shall receive an annual salary to be fixed by law from within the amounts appropriated therefor. Such special prosecutor shall possess all of the powers of an assistant attorney general otherwise authorized by this act provided, however that such special prosecutor shall devote his or her full time and effort exclusively to investigations and prosecutions of any death of an unarmed civilian caused by a police officer.

3. The special prosecutor may appoint such other deputies, directors, assistants, and other employees to serve at the special prosecutor's pleasure and discretion as may be needed for the performance of duties

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

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and may prescribe their powers and fix their compensation within the amounts appropriated therefor.

4. The special prosecutor shall have the following special functions, powers and duties:

(a) To exercise all the prosecutorial powers necessary to investigate, and if warranted, prosecute any death of an unarmed civilian caused by a police officer. The special prosecutor's jurisdiction will displace and supersede the jurisdiction of the county district attorney where the incident occurred; and such county district attorney shall have only the powers and duties designated to him or her by the special prosecutor;

(b) To attend in person, a term or terms of the county or supreme court to be held in and for the county of such appropriate jurisdiction consistent with this act; appear in person before any grand jury drawn for any term or terms of said court, for the purpose of conducting any and all proceedings, examinations, and inquiries; and bring any and all criminal actions and proceedings which may be had or taken before said grand jury and other grand juries concerning or relating to any and all alleged unlawful acts as described by this act;

(c) To conduct a full, reasoned, and independent investigation including, but not limited to, (i) gathering and analyzing evidence, (ii) conducting witness interviews, and (iii) reviewing investigative reports, scientific reports, and audio and video recordings;

(d) To report to the governor and the legislature on all cases where, (i) the special prosecutor declines to present evidence to a grand jury regarding the death of a civilian, whether in custody or not, allegedly caused by a police officer, or (ii) the grand jury declines to return an indictment on any charges. The report will include, to the extent possible and lawful, an explanation of that outcome and any recommendations for systemic reform arising from the investigation;

(e) To make an annual report to the governor, the attorney general and the legislature concerning such work during the preceding year, and to make such further interim reports to them as they or any of them shall deem advisable or require; and

(f) To do all things necessary or convenient to carry out the functions, powers and duties set forth in this act.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.