

§ 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 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.

3-a. (a) The attorney general shall maintain the confidentiality of all video footage and audio recordings received and reviewed.

(b) Disclosure of any audio recordings or video footage shall be delayed, at the attorney general's discretion, only if such a disclosure would compromise an ongoing criminal investigation or prosecution, or at the request of the decedent's family.

(c) Redactions of audio records or video footage shall be made pursuant to its video release policy.

(d) Nothing in this subdivision shall be construed to prohibit or restrict the disclosure of audio recordings or video footage to any person or entity otherwise lawfully entitled to receive such recordings or footage pursuant to law, court order, or lawful process.

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.

8. (a) Notwithstanding any other provision of law, rule or regulation to the contrary, in a matter in which the attorney general's authority established under this section conflicts, or has a reasonable risk of conflicting, with the attorney general's representation of state employees in civil litigation under section seventeen of the public officers law, the attorney general may designate a deputy attorney general or assistant attorney general, including any person designated under subdivision five of this section, as provided by section nine of the public officers law, to act as attorney general for that matter in the attorney general's stead.

(b) Notwithstanding any other provision of law, rule or regulation to the contrary, the attorney general shall establish through rules and regulations, processes and procedures for screening (i) the person so designated pursuant to paragraph (a) of this subdivision, and the entire prosecution team, from records, communication, and information related to the civil defense of a police officer or peace officer as defined in subdivision one of this section, and (ii) persons involved in the civil defense of a police officer or peace officer as defined in subdivision one of this section from records, communication, and information related to the investigation and, where appropriate, prosecution of state peace or police officers under this section. The rules and regulations establishing screens shall be sufficient to satisfy the rules of professional conduct regarding conflicts and to protect the rights of state peace and police officers who are the subject of an investigation or prosecution under this section by ensuring that the individuals conducting or otherwise involved in such investigation or prosecution do not have access to any confidential information obtained in the course of the office's civil defense of state employees.

