

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 400 Session of 2017

INTRODUCED BY HAYWOOD, LEACH, COSTA AND HUGHES, MARCH 20, 2017

REFERRED TO JUDICIARY, MARCH 20, 2017

AN ACT

1 Amending the act of October 15, 1980 (P.L.950, No.164), entitled  
 2 "A supplement to the act of April 9, 1929 (P.L.177, No.175),  
 3 entitled 'An act providing for and reorganizing the conduct  
 4 of the executive and administrative work of the Commonwealth  
 5 by the Executive Department thereof and the administrative  
 6 departments, boards, commissions, and officers thereof,  
 7 including the boards of trustees of State Normal Schools, or  
 8 Teachers Colleges; abolishing, creating, reorganizing or  
 9 authorizing the reorganization of certain administrative  
 10 departments, boards, and commissions; defining the powers and  
 11 duties of the Governor and other executive and administrative  
 12 officers, and of the several administrative departments,  
 13 boards, commissions, and officers; fixing the salaries of the  
 14 Governor, Lieutenant Governor, and certain other executive  
 15 and administrative officers; providing for the appointment of  
 16 certain administrative officers, and of all deputies and  
 17 other assistants and employes in certain departments, boards,  
 18 and commissions; and prescribing the manner in which the  
 19 number and compensation of the deputies and all other  
 20 assistants and employes of certain departments, boards and  
 21 commissions shall be determined,' implementing the addition  
 22 of section 4.1 to Article IV of the Constitution of  
 23 Pennsylvania; establishing the Office of Attorney General  
 24 elected by the citizens and setting forth powers and duties  
 25 of the Attorney General; creating an Office of General  
 26 Counsel and providing for legal services for Commonwealth  
 27 agencies; transferring, reorganizing or reconstituting  
 28 certain boards, commissions and agencies; placing certain  
 29 duties upon the courts and district attorneys; repealing  
 30 certain acts and parts of acts and making appropriations," in  
 31 general provisions, further providing for definitions; and,  
 32 in Office of Attorney General, further providing for criminal  
 33 prosecutions.

34 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 102 of the act of October 15, 1980  
3 (P.L.950, No.164), known as the Commonwealth Attorneys Act, is  
4 amended by adding a definition to read:

5 Section 102. Definitions.

6 The following words and phrases when used in this act shall  
7 have, unless the context clearly indicates otherwise, the  
8 meanings given to them in this section:

9 \* \* \*

10 "Special prosecutor." An employee within the Office of  
11 Attorney General who is designated to oversee, investigate and  
12 prosecute incidents relating to peace officers involved in  
13 incidents which may constitute criminal homicide.

14 Section 2. Section 205 of the act is amended by adding a  
15 subsection to read:

16 Section 205. Criminal prosecutions.

17 \* \* \*

18 (e) Special prosecutor.--

19 (1) The Attorney General shall have exclusive  
20 jurisdiction to and shall appoint a special prosecutor to  
21 investigate and prosecute the conduct of a peace officer, as  
22 defined by 18 Pa.C.S. § 501 (relating to definitions), who,  
23 acting in an official capacity, is involved in an incident in  
24 which an individual has died under circumstances which may  
25 constitute the offense of criminal homicide under 18 Pa.C.S.  
26 Ch. 25 (relating to criminal homicide) as a result of the  
27 peace officer's conduct.

28 (2) The special prosecutor shall have the sole authority  
29 to investigate the circumstances and to prosecute under this  
30 subsection if the circumstances warrant.

1       (3) A special prosecutor must have a minimum of 10  
2 years' experience in either criminal defense or criminal  
3 prosecutions in this Commonwealth.

4       (4) Notwithstanding any other provision of law, a  
5 special prosecutor appointed under this section shall have,  
6 with respect to all matters in the special prosecutor's  
7 prosecutorial jurisdiction established under this section,  
8 full power and independent authority to exercise all  
9 investigative and prosecutorial functions and powers of the  
10 Office of Attorney General, the Attorney General and any  
11 other officer or employee of the Office of Attorney General.  
12 Investigative and prosecutorial functions and powers shall  
13 include, but are not limited to:

14           (i) Conducting proceedings before grand juries and  
15 other investigations.

16           (ii) Bringing charges without a grand jury  
17 indictment.

18           (iii) Participating in court proceedings and  
19 engaging in litigation, including civil and criminal  
20 matters, that the special prosecutor considers necessary.

21           (iv) Appealing a decision of a court in a case or  
22 proceeding in which the special prosecutor participates  
23 in an official capacity.

24           (v) Reviewing all documentary evidence available  
25 from a source.

26           (vi) Determining whether to contest the assertion of  
27 a testimonial privilege.

28           (vii) Receiving appropriate security clearances and,  
29 if necessary, contesting in court, including, where  
30 appropriate, participating in an in camera proceeding, a

1 claim of privileges or attempt to withhold evidence on  
2 grounds of security.

3 (viii) Making applications to a State court for a  
4 grant of immunity to a witness, consistent with  
5 applicable statutory requirements, or for warrants,  
6 subpoenas or other court orders and exercising the  
7 authority vested in the Attorney General or a district  
8 attorney.

9 (ix) Inspecting, obtaining or using the original or  
10 a copy of a tax return in accordance with applicable  
11 statutes and regulations.

12 (x) Initiating and conducting prosecutions in a  
13 court of competent jurisdiction, framing and signing  
14 indictments, filing information and handling all aspects  
15 of a case in the name of the Commonwealth.

16 (xi) Consulting with the district attorney for the  
17 county in which a violation of law, with respect to which  
18 the special prosecutor is appointed, has allegedly  
19 occurred.

20 (5) The special prosecutor shall submit a report to the  
21 Attorney General detailing what, if any, charges were brought  
22 or the rationale for why no charges were brought.  
23 Notwithstanding any other provisions of law, the report filed  
24 under this section shall be made available to the public.

25 Section 3. This act shall take effect in 90 days.