

SENATE BILL 225

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 8;
Title 17 and Title 23, relative to district attorneys
general.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-7-502, is amended by deleting the section and substituting instead the following:

It is the legislative intent that any misconduct by a district attorney general before the grand jury shall be subject to the jurisdiction of the board of judicial conduct in accordance with title 17, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 17-5-101, is amended by deleting the section and substituting instead the following:

It is expressly declared to be the legislative intent in the enactment of this chapter to:

- (1) Provide an orderly and efficient method for making inquiry into:
 - (A) The physical, mental and moral fitness of any Tennessee judge or district attorney general;
 - (B) The judge's or district attorney general's manner of performance of duty;
 - (C) The judge's or district attorney general's commission of any act calculated to reflect unfavorably upon this state or that may adversely affect the administration of justice in this state; or
 - (D) The conduct of candidates for judicial office or district attorney general positions;
- (2) Provide a process by which appropriate sanctions may be imposed; and

(3) Implement Tennessee Constitution Article VI, § 6 by providing a procedure for the removal of judges.

SECTION 3. Tennessee Code Annotated, Section 17-5-102, is amended by adding the following language as a new, appropriately designated subdivision:

() All district attorneys general or candidates for such office;

SECTION 4. Tennessee Code Annotated, Section 17-5-207(b)(6), is amended by deleting the subdivision and substituting instead the following:

(6) The number of complaints for which formal charges have been filed based on a recommendation by an investigative panel, including the nature of the charge, the names of the complainant or complainants, and the judge or district attorney general against whom the complaint is filed;

SECTION 5. Tennessee Code Annotated, Section 17-5-208, is amended by adding the following language as a new, appropriately designated subsection:

(c)

(1) In conjunction with the notice described in subsection (a), the chair of the board shall also include the name of the district attorney general, the reason for the reprimand and the number of previous reprimands each time any of the following events occur:

(A) A district attorney general receives a second or subsequent public reprimand for conduct occurring during the entire period of time the person is a district attorney general;

(B) A district attorney general receives a second or subsequent private reprimand for conduct within the same misconduct category set out in § 17-5-207(b)(7) occurring during any term the person holds the office of district attorney general; or

(C) A district attorney general receives a third or subsequent private reprimand for conduct within any of the misconduct categories set

out in § 17-5-207(b)(7) occurring during any term the person holds the office of district attorney general.

(2)

(A) The notice provided the speakers pursuant to subdivision (c)(1)(A) shall be a public record.

(B) The notice provided the speakers pursuant to subdivisions (c)(1)(B) and (C) shall remain confidential unless the general assembly opens an investigation of such district attorney general.

SECTION 6. Tennessee Code Annotated, Section 17-5-301(f)(6), is amended by deleting the subdivision and substituting instead the following:

(6) Entry of judgment recommending removal of the judge or district attorney general from office.

SECTION 7. Tennessee Code Annotated, Section 17-5-301(g)(1), is amended by adding the language "or district attorney general" immediately after the word "judge" in the two places where it appears in the subdivision.

SECTION 8. Tennessee Code Annotated, Section 17-5-301(g)(2), is amended by deleting the subdivision and substituting instead the following:

(2) "Private censure" means a written finding that the conduct of the judge, justice or district attorney general violates a rule of judicial conduct or the Tennessee rules of professional conduct, as applicable, detrimentally affects the integrity of the judiciary or undermines public confidence in the administration of justice and requiring a judge, justice or district attorney general to appear personally before the board. A private censure is stronger than a private reprimand and may include a requirement that the judge, justice or district attorney general follow a specified course of corrective action;

SECTION 9. Tennessee Code Annotated, Section 17-5-301(g)(3), is amended by deleting the word "judicial".

SECTION 10. Tennessee Code Annotated, Section 17-5-301(i), is amended by deleting the subsection and substituting instead the following:

(i) The criteria to be considered by the board or the investigatory panel in determining the sanction or combination of sanctions appropriate for the level of culpability involved in the judge's or district attorney general's misconduct include the following:

(1) Whether the misconduct is an isolated instance or evidences a pattern of conduct;

(2) The nature, extent and frequency of occurrence of the acts of misconduct;

(3) Whether the misconduct occurred in or out of the courtroom;

(4) Whether the misconduct occurred while the judge or district attorney general was acting in an official capacity;

(5) Whether the judge or district attorney general has acknowledged or recognized the occurrence, nature and impropriety of the acts;

(6) Whether the judge or district attorney general has evidenced an effort to change or modify conduct;

(7) The judge's or district attorney general's length of service;

(8) Whether there have been prior complaints about the judge or district attorney general, except where prior complaints have been found frivolous, unfounded or without jurisdiction pursuant to § 17-5-305;

(9) The effect of the misconduct upon the integrity of, and respect for, the judiciary or administration of justice; and

(10) The extent to which the judge or district attorney general exploited the official position for personal gain or satisfaction.

SECTION 11. Tennessee Code Annotated, Section 17-5-302(4), is amended by adding the language "and district attorneys general" immediately after the word "judges".

SECTION 12. Tennessee Code Annotated, Section 17-5-303(a), is amended by adding the language "or district attorney general" immediately following the word "judge" in the two places where it appears, and further amend by deleting the language "judicial duty" and substituting instead the language "the judge's or district attorney general's official duty".

SECTION 13. Tennessee Code Annotated, Section 17-5-303(c), is amended by adding the language "or district attorney general" immediately after the word "judge".

SECTION 14. Tennessee Code Annotated, Section 17-5-304(a), is amended by deleting the word "judicial".

SECTION 15. Tennessee Code Annotated, Section 17-5-304(b), is amended by adding the language "or district attorney general" immediately after the word "judge".

SECTION 16. Tennessee Code Annotated, Section 17-5-304(c)(2), is amended by adding the language "or district attorney general" immediately after the word "judge".

SECTION 17. Tennessee Code Annotated, Section 17-5-304(d), is amended by adding the language "or district attorney general" immediately after the word "judge" where it appears in subdivisions (1) and (3), and further amend by adding the language "or district attorney general's" immediately after the word "judge's" where it appears in subdivisions (1)(B) and (1)(C).

SECTION 18. Tennessee Code Annotated, Section 17-5-304(e), is amended by adding the language "or district attorney general" immediately after the word "judge" wherever it appears in the subsection, and further amend by deleting the language "a judicial" and substituting instead "an".

SECTION 19. Tennessee Code Annotated, Section 17-5-304(f) and (g), are amended by deleting the subsections and substituting instead the following:

(f) In the event the investigative panel finds that there is reasonable cause to believe that the judge or district attorney general committed an offense, and the investigative panel directs disciplinary counsel to file a formal charge, then from the filing of the formal charge forward, all records, actions and proceedings of the board shall be subject to § 10-7-503 and title 8, chapter 44, except that the board may deliberate in private.

(g) Upon the filing of an indictment, presentment or information charging a judge or district attorney general with a felony under the law of any state or under federal law, the board may immediately place the judge or district attorney general on interim suspension.

SECTION 20. Tennessee Code Annotated, Section 17-5-307, is amended by deleting the section and substituting instead the following:

(a) When, in the preliminary judgment of the investigative panel, there is probable cause to believe the judge or district attorney general under investigation is guilty of one (1) or more of the offenses prescribed in § 17-5-302, or is suffering from a disability as set forth in § 17-5-303, it shall be the duty of the disciplinary counsel to give the judge or district attorney general under investigation written notice of the details of the formal charges.

(b) The formal charges shall give fair and adequate notice of the nature of the alleged misconduct or incapacity. Disciplinary counsel shall file the formal charges with the board. Disciplinary counsel shall cause a copy of the formal charges to be served upon the judge or district attorney general, or their counsel, by certified mail and shall file proof of service with the board.

(c) The judge or district attorney general shall have thirty (30) days from and after the receipt of written notice of the formal charges within which to file an answer with the board and serve a copy on disciplinary counsel.

(d) The raising of a mental or physical condition as a defense constitutes a waiver of any medical privilege.

(e) Failure to answer the formal charges shall constitute an admission of the factual allegations.

(f) If the judge or district attorney general fails to appear when specifically so ordered by the hearing panel or the board, the judge or district attorney general shall be deemed to have admitted the factual allegations that were to be the subject of the appearance and to have conceded the merits of any motion or recommendation to be considered at the appearance. Absent good cause, the hearing panel or board shall not continue or delay proceedings because of the judge's or district attorney general's failure to appear.

(g)

(1) At any time after the filing of formal charges and before final disposition, the judge or district attorney general may agree with disciplinary counsel that the judge or district attorney general shall admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the hearing panel assigned to the case, which shall either:

(A) Reject the agreement; or

(B) Approve the agreement and enter the order disciplining the judge or district attorney general.

(2) If the stated sanction is rejected by the hearing panel, the agreement shall be withdrawn and cannot be used against the judge or district attorney general in any proceedings.

(3) A judge or district attorney general who consents to a stated sanction shall sign an affidavit stating that:

(A) The judge or district attorney general consents to the sanction;

(B) The consent is freely and voluntarily rendered;

(C) There is presently pending a proceeding involving allegations of misconduct, which shall be specifically set forth in the affidavit; and

(D) The facts set forth in the affidavit are true.

(4) Upon approval by the hearing panel, the affidavit shall be filed with the board. The affidavit shall remain confidential until it is filed with the board. The final order of discipline shall be based upon the formal charges and the conditional admission.

SECTION 21. Tennessee Code Annotated, Section 17-5-308(a), is amended by adding the language "or district attorney general" immediately after the word "judge", and is further amended by adding the language "or district attorney general's" immediately after the word "judge's".

SECTION 22. Tennessee Code Annotated, Section 17-5-309(c), is amended by adding the language "or district attorney general" immediately after the word "judge" in the two places where it appears.

SECTION 23. Tennessee Code Annotated, Section 17-5-310(a), is amended by adding the language "or district attorney general" immediately after the word "judge".

SECTION 24. Tennessee Code Annotated, Title 17, Chapter 5, Part 1, is amended by adding the following language as a new section:

In accordance with the intent expressed in § 8-7-502, the board of judicial conduct shall be the sole disciplinary authority for violations of the Tennessee rules of professional conduct by district attorneys general.

SECTION 25. This act shall take effect July 1, 2013, the public welfare requiring it.