

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/27/23

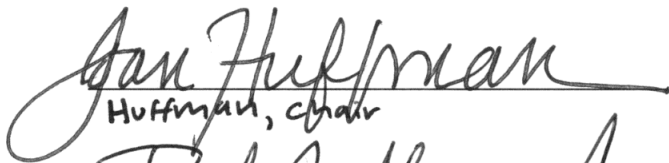
Date

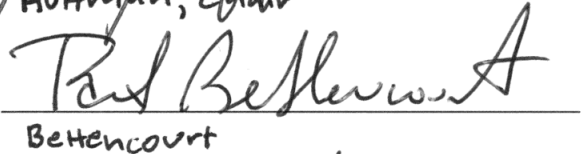
Honorable Dan Patrick
President of the Senate

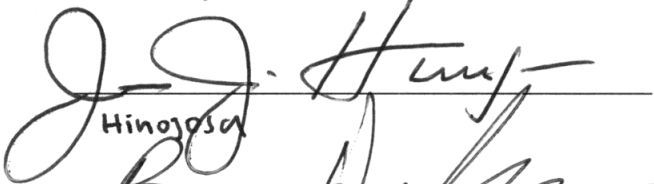
Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

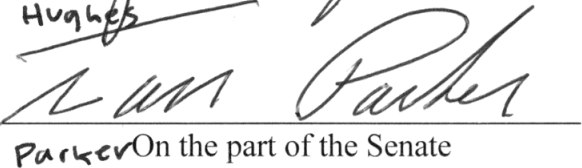
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB-17 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

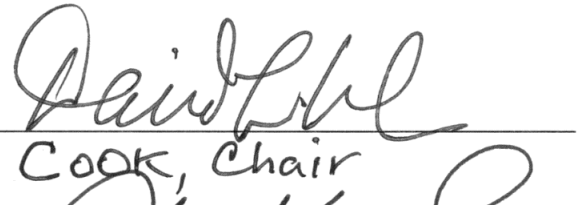

Huffman, chair

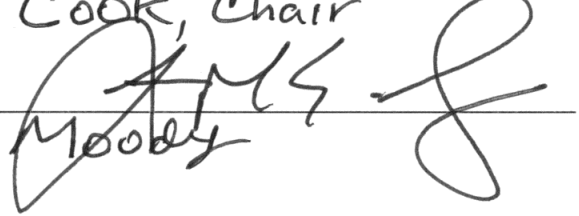

Behencourt

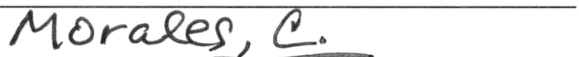

Hinojosa

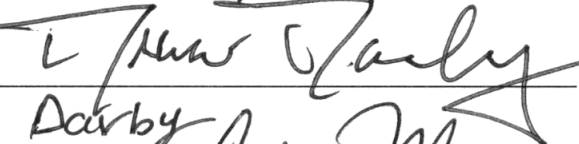

Hughes

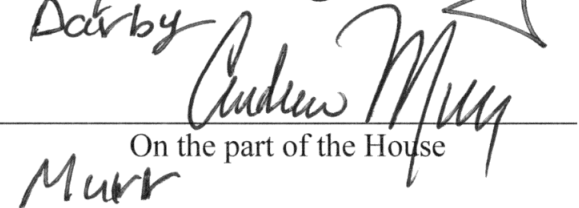

Parker On the part of the Senate


Cook, Chair


Moody


Morales, C.


Darby


Murk
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 17

A BILL TO BE ENTITLED

1 AN ACT
2 relating to official misconduct by and removal of prosecuting
3 attorneys.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 87.011, Local Government Code, is
6 amended by amending Subdivision (3) and adding Subdivisions (4) and
7 (5) to read as follows:

8 (3) "Official misconduct" means intentional, unlawful
9 behavior relating to official duties by an officer entrusted with
10 the administration of justice or the execution of the law. The term
11 includes:

12 (A) an intentional or corrupt failure, refusal,
13 or neglect of an officer to perform a duty imposed on the officer by
14 law;

15 (B) a prosecuting attorney's adoption or
16 enforcement of a policy of refusing to prosecute a class or type of
17 criminal offense under state law or instructing law enforcement to
18 refuse to arrest individuals suspected of committing a class or
19 type of offense under state law, except a policy adopted:

20 (i) in compliance with state law or an
21 injunction, judgment, or other court order;

22 (ii) in response to a reasonable
23 evidentiary impediment to prosecution; or

24 (iii) to provide for diversion or similar

1 conditional dismissals of cases when permissible under state law;
2 or

3 (C) permitting an attorney who is employed by or
4 otherwise under the direction or control of the prosecuting
5 attorney to refuse to prosecute a class or type of criminal offense
6 under state law or instruct law enforcement to refuse to arrest
7 individuals suspected of committing a class or type of offense
8 under state law for any reason other than a reason described by
9 Paragraph (B)(i), (ii), or (iii).

10 (4) "Policy" means an instruction or directive
11 expressed in any manner.

12 (5) "Prosecuting attorney" means a district attorney
13 or a county attorney with criminal jurisdiction.

14 SECTION 2. Subchapter B, Chapter 87, Local Government Code,
15 is amended by adding Section 87.0131 to read as follows:

16 Sec. 87.0131. DEFENSE IN CERTAIN CASES. It is a defense in
17 an action alleging a prosecuting attorney committed official
18 misconduct described by Section 87.011(3)(C) that the prosecuting
19 attorney took action immediately on discovering an attorney
20 employed by or otherwise under the direction or control of the
21 prosecuting attorney was acting as described by Section
22 87.011(3)(C).

23 SECTION 3. Section 87.015, Local Government Code, is
24 amended by amending Subsections (b) and (c) and adding Subsection
25 (b-1) to read as follows:

26 (b) A petition for removal of an officer other than a
27 prosecuting attorney may be filed by any [Any] resident of this

1 state who has lived for at least six months in the county in which
2 the petition is to be filed and who is not currently under
3 indictment in the county [~~may file the petition~~]. At least one of
4 the parties who files the petition must swear to it at or before the
5 filing.

6 (b-1) A petition for removal of a prosecuting attorney may
7 be filed by any resident of this state who, at the time of the
8 alleged cause of removal, lives and has lived for at least six
9 months in the county in which the alleged cause of removal occurred
10 and who is not currently charged with a criminal offense in that
11 county. At least one of the parties who files the petition must
12 swear to it at or before the filing.

13 (c) A [The] petition for removal of an officer other than a
14 prosecuting attorney must be addressed to the district judge of the
15 court in which it is filed. A petition for removal of a prosecuting
16 attorney must be addressed to the presiding judge of the
17 administrative judicial region in which the petition is filed. The
18 petition must set forth the grounds alleged for the removal of the
19 officer in plain and intelligible language and must cite the time
20 and place of the occurrence of each act alleged as a ground for
21 removal with as much certainty as the nature of the case permits.

22 SECTION 4. Subchapter B, Chapter 87, Local Government Code,
23 is amended by adding Section 87.0151 to read as follows:

24 Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a)
25 Immediately after a petition for removal of a prosecuting attorney
26 is filed under Section 87.015, the district clerk shall deliver a
27 copy of the petition to the presiding judge of the administrative

1 judicial region in which the court sits.

2 (b) On receiving a petition for removal of a prosecuting
3 attorney under Subsection (a), the presiding judge of the
4 administrative judicial region shall assign a district court judge
5 of a judicial district that does not include the county in which the
6 petition was filed to conduct the removal proceedings.

7 SECTION 5. Section 87.018, Local Government Code, is
8 amended by amending Subsections (e) and (f) and adding Subsections
9 (g) and (h) to read as follows:

10 (e) In a proceeding to remove a county attorney who is not a
11 prosecuting attorney from office, the district attorney shall
12 represent the state. If the county does not have a district
13 attorney, the county attorney from an adjoining county, as selected
14 by the commissioners court of the county in which the proceeding is
15 pending, shall represent the state.

16 (f) In a proceeding to remove a prosecuting attorney [~~the~~
17 ~~county attorney or district attorney~~] from office, the presiding
18 judge of the administrative judicial region in which the petition
19 for removal was filed shall appoint a prosecuting [~~the county~~]
20 attorney from another judicial district or county, as applicable,
21 in the administrative judicial region to [~~from an adjoining county,~~
22 ~~as selected by the commissioners court of the county in which the~~
23 ~~proceeding is pending, shall~~] represent the state [~~if the attorney~~
24 ~~who would otherwise represent the state under this section is also~~
25 ~~the subject of a pending removal proceeding~~].

26 (g) In a proceeding to remove a prosecuting attorney from
27 office, a prosecuting attorney's public statement establishing

1 that the prosecuting attorney adopted or enforced or intends to
2 adopt or enforce a policy described by Section 87.011(3)(B) or
3 permitted or intends to permit an attorney who is employed by or
4 otherwise under the direction or control of the prosecuting
5 attorney to act as described by Section 87.011(3)(C) creates a
6 rebuttable presumption that the prosecuting attorney committed
7 official misconduct.

8 (h) In a trial in which a prosecuting attorney is accused of
9 committing official misconduct under Section 87.011(3)(B) or (C), a
10 court may award reasonable attorney's fees and costs the
11 prosecuting attorney personally spent related to the conduct of the
12 proceeding on finding that the prosecuting attorney did not adopt
13 or enforce a policy described by Section 87.011(3)(B) or permit an
14 attorney who is employed by or otherwise under the direction or
15 control of the prosecuting attorney to act as described by Section
16 87.011(3)(C), as applicable.

17 SECTION 6. The changes in law made by this Act apply only to
18 an action taken or public statement made by a prosecuting attorney
19 on or after the effective date of this Act.

20 SECTION 7. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2023.

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

No equivalent provision. But see SECTION 1 below.

SECTION 1. Subchapter B, Chapter 87, Local Government Code, is amended by adding Section 87.0135 to read as follows:

Sec. 87.0135. OFFICIAL MISCONDUCT GROUNDS: POLICY OF NONENFORCEMENT OF CRIMINAL OFFENSES. (a) In this section:

Same as House version. *But see SECTION 1 below.*

See Secs. 87.011(4) and (5) below.

(1) "Policy" includes an instruction or directive expressed in any manner.

See Secs. 87.011(4) and (5) below.

(2) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

See Secs. 87.011(3)(B), part, below.

(b) A prosecuting attorney may not adopt or enforce a policy under which the prosecuting attorney refuses to prosecute a class or type of criminal offense for any reason other than to comply with an injunction, judgment, or order issued by a court.

See Secs. 87.011(3)(B), part, below.

(c) In compliance with Subsection (b), a prosecuting attorney may not permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to refuse to prosecute a class or type of criminal offense for any reason other than to comply with an injunction, judgment, or order issued by a court.

See Secs. 87.011(3)(C), part, below.

(d) A prosecuting attorney who violates this section commits official misconduct for purposes of removal under this subchapter.

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 87.011, Local Government Code, is amended by amending Subdivision (3) and adding Subdivisions (4) and (5) to read as follows:

(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(A) an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law; or

(B) a prosecuting attorney's adoption or enforcement of a policy of **category** refusing to prosecute **specific** criminal **offenses** under state law, except a policy adopted:

(i) in compliance with state law or an injunction, judgment, or other court order;

(ii) in response to **an** evidentiary impediment to prosecution;

(iii) to provide for diversion or similar conditional dismissals of cases when **not otherwise prohibited by** state law; or

SENATE VERSION (CS)

No equivalent provision. But see SECTION 1 above.

See Sec. 87.0135(b), part, above.

See Sec. 87.0135(b), part, above.

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 1. Same as House version except as follows:

(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(A) an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law;

(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute **a class or type of** criminal **offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense** under state law, except a policy adopted:

(i) in compliance with state law or an injunction, judgment, or other court order;

(ii) in response to **a reasonable** evidentiary impediment to prosecution; **or**

(iii) to provide for diversion or similar conditional dismissals of cases when **permissible under** state law; or

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

(iv) to require supervisory review or the presentation of certain specified evidence before prosecution is authorized.

See Sec. 87.0135(c) above.

(C) permitting an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to refuse to prosecute a class or type of criminal offense under state law or instruct law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law for any reason other than a reason described by Paragraph (B)(i), (ii), or (iii).

(4) "Policy" means an instruction or directive expressed in any manner.

See Sec. 87.0135(a) above.

(4) "Policy" means an instruction or directive expressed in any manner.

(5) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

(5) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

No equivalent provision.

Same as House version.

SECTION 2. Subchapter B, Chapter 87, Local Government Code, is amended by adding Section 87.0131 to read as follows:

Sec. 87.0131. DEFENSE IN CERTAIN CASES. It is a defense in an action alleging a prosecuting attorney committed official misconduct described by Section 87.011(3)(C) that the prosecuting attorney took action immediately on discovering an attorney employed by or otherwise under the direction or control of the prosecuting attorney was acting as described by Section 87.011(3)(C).

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

SECTION 2. Section 87.015, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b) A petition for removal of an officer other than a prosecuting attorney may be filed by any ~~Any~~ resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county ~~[may file the petition]~~. At least one of the parties who files the petition must swear to it at or before the filing.

(b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense *other than a Class C misdemeanor* in that county. At least one of the parties who files the petition must swear to it at or before the filing.

(c) A ~~The~~ petition for removal of an officer other than a prosecuting attorney must be addressed to the district judge of the court in which it is filed. A petition for removal of a prosecuting attorney must be addressed to the presiding judge of the administrative judicial region in which the petition is filed. The petition must set forth the grounds alleged for the removal of the officer in plain and intelligible language and must cite the time and place of the occurrence

No equivalent provision.

SECTION 3. Same as House version except added Subsection (b-1) reads as follows:

(b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense in that county. At least one of the parties who files the petition must swear to it at or before the filing.

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

SECTION 3. Subchapter B, Chapter 87, Local Government Code, is amended by adding Section 87.0151 to read as follows:

Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a) Immediately after a petition for removal of a prosecuting attorney is filed **with a district court** under Section 87.015, the district clerk shall deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits.

(b) On receiving a petition for removal of a prosecuting attorney under Subsection (a), the presiding judge of the administrative judicial region shall assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings.

SECTION 4. Section 87.018, Local Government Code, is amended by amending Subsections (e) and (f) and adding Subsections (g) and (h) to read as follows:

(e) In a proceeding to remove a county attorney who is not a prosecuting attorney from office, the district attorney shall represent the state. If the county does not have a district attorney, the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state.

No equivalent provision.

No equivalent provision.

SECTION 4. Same as House version except added Subsection (a) does not specify that the petition is filed **with a district court**.

SECTION 5. Same as House version except added Subsections (g) and (h) read as follows:

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

(f) In a proceeding to remove a prosecuting attorney [~~the county attorney or district attorney~~] from office, the presiding judge of the administrative judicial region in which the petition for removal was filed shall appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to [from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall] represent the state [~~if the attorney who would otherwise represent the state under this section is also the subject of a pending removal proceeding~~].

(g) In a proceeding to remove a prosecuting attorney from office, a prosecuting attorney's public statement that the prosecuting attorney *has* adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) creates a rebuttable presumption that the prosecuting attorney *has* committed official misconduct.

(h) *A prosecuting attorney who prevails in a proceeding under this section is entitled to reasonable attorney's fees and costs that the prosecuting attorney personally expended in the proceeding.*

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

(g) In a proceeding to remove a prosecuting attorney from office, a prosecuting attorney's public statement *establishing that the prosecuting attorney adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) or permitted or intends to permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C)* creates a rebuttable presumption that the prosecuting attorney committed official misconduct.

(h) *In a trial in which a prosecuting attorney is accused of committing official misconduct under Section 87.011(3)(B) or (C), a court may award reasonable attorney's fees and costs the prosecuting attorney personally spent related to the conduct of the proceeding on finding that the prosecuting attorney did not adopt or enforce a policy described by Section 87.011(3)(B) or permit an attorney who is*

House Bill 17
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C), as applicable.

SECTION 5. The changes in law made by this Act apply only to an action taken or public statement made by a prosecuting attorney on or after the effective date of this Act.

No equivalent provision.

SECTION 6. Same as House version.

SECTION 6. Effective date.

SECTION 2. Same as House version.

SECTION 7. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 27, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB17 by Cook (Relating to official misconduct by and removal of prosecuting attorneys.),
Conference Committee Report

No significant fiscal implication to the State is anticipated.

It is assumed that any costs associated with the bill could be absorbed using existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

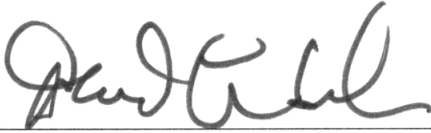
Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JMc, CMA, SD, SMAT, JPa

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order.

I certify that a copy of the conference committee report on HB 17 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before paper copies of the report were submitted to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.



(Signature)

5/27/23

(Date)