

**SUBJECT:** Amending procedures for removing a prosecuting attorney

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Moody, Cook, Darby, Harrison, Leach, Schatzline  
3 nays — Bhojani, Bowers, C. Morales

**WITNESSES:** For — Thomas Villarreal, Austin Police Association; Jennifer Szimanski, Combined Law Enforcement Associations of Texas; Tami Brown Rodriguez, Jaco Booyens Ministries; Joell McNew, SafeHorns; Kyleen Wright, Texans for Life Committee; Joe Pojman PhD, Texas Alliance for Life; John Wilkerson, Texas Municipal Police Association; Rebecca Parma, Texas Right to Life; Rupal Chaudhari; Matt Mackowiak; Cleo Petricek; Dane Wilkins (*Registered, but did not testify*: Marvin Ryals, Combined Law Enforcement Associations of Texas; James Parnell, Dallas Police Association; Justin Keener, Doug Deason; Joe Morris, Game Warden Peace Officers Association; Ray Hunt, HPOU; Carlos Ortiz, San Antonio Police Officers Association; Charles Maley, South Texans' Property Rights Association; Amy O'Donnell, Texas Alliance for Life; Ashley Sosa, Texas Alliance for Life; Nikki Pressley, Texas Public Policy Foundation; AJ Louderback, Texas Sheriffs Regional Alliance; and seven individuals)

Against — Nick Hudson, American Civil Liberties Union of Texas (*Registered, but did not testify*: Andrew Hendrickson, ACLU of Texas; Joe Hamill, AFSCME Local 1624 Austin/Travis County; Chris Harris, Austin Justice Coalition; Blake Rocap, Avow Texas; Stephanie Perdue, Central Texas Pride Community Center; Adam Haynes, Conference of Urban Counties; Rick Thompson, County Judges and Commissioners Association of Texas; Luis Figueroa, Every Texan; Heather Allison, Fund Texas Choice; Bethany Carson, Grassroots Leadership; Chantel Pridgon, Grassroots Leadership; Sybil Sybille, Grassroots Leadership; Christina Glenn, HISD; Kathy Mitchell, Just Liberty; Kent Birdsong, Oldha County Attorneys Office/elected prosecutor; Darcy Caballero, Planned Parenthood Texas Votes; Nora Gustafson, Queer Friends ATX; Ana

Gonzalez, Texas AFL-CIO; Akanksha Balekai, Texas Appleseed; Alycia Castillo, Texas Center for Justice and Equity; Alexis Bay, Jenny Hixon, Texas Civil Rights Project; Ryan Garcia, Texas Democratic Party; Cindy Cuellar, Cerena Haefs, Cameron Mayfield, Texas Freedom Network; Veronica Costilla, Gracie Israel, Elizabeth Mckay, Jaqueline Noyola, Joshua Ramos, Texas Rising; Erin Walter, Texas Unitarian Universalist Justice Ministry; Cicely Kay, Travis County Commissioners Court; Cynthia Van Maanen, Travis County Democratic Party; Nicole Ma, Woori Juntos; Quynh-Huong Nguyen, Woori Juntos; and 138 individuals)

On — Jack Roady, Galveston County Criminal District Attorney; Chris Gatewood, Smith County District Attorney's Office; Jennifer Laurin (*Registered, but did not testify*: Kent Birdsong, Oldham County Attorney)

**DIGEST:** Under CSHB 17, a prosecuting attorney would mean a district attorney or a county attorney with criminal jurisdiction.

CSHB 17 would expand the definition of “official misconduct” to include a prosecuting attorney’s adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses under state law. Such a policy, defined as an instruction or directive expressed in any matter, would not be considered official misconduct if it was adopted:

- in compliance with state law or an injunction, judgment, or other court order;
- in response to an evidentiary impediment to prosecution;
- to provide for diversion or similar conditional dismissal of cases; or
- to require supervisory review or the presentation of certain specified evidence before prosecution was authorized.

**Petition for removal.** CSHB 17 would amend the provisions relating to the removal of a prosecuting attorney from office.

A petition for removal of a prosecuting attorney could be filed by any resident of the state who, at the time of the alleged cause of removal, lived and had lived for at least six months in the county in which the alleged

cause of removal occurred and who was not currently charged with a criminal offense other than a class C misdemeanor in that county. At least one of the parties who filed the petition would have to swear to it at or before the filing.

Such a petition would have to be addressed to the presiding judge of the administrative judicial region in which the petition was filed.

**Assignment of a judge.** Immediately after a petition for removal of a prosecuting attorney was filed with a district court, the district clerk would be required to deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sat. On receiving the petition, the judge would be required to assign a district court judge of a judicial district that did not include the county in which the petition was filed to conduct the removal proceedings.

**Trial.** CSHB 17 would amend certain provisions relating to the court proceedings for a removal of a prosecuting attorney.

CSHB 17 would remove the requirement that a county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding was pending, represent the state in a removal proceeding if the attorney who would otherwise represent the state was the subject of a pending removal proceeding. This provision would be replaced by a requirement that the judge of the administrative judicial region in which the petition was filed appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to represent the state in a removal proceeding.

In a removal proceeding, a prosecuting attorney's public statement indicating that the attorney adopted or enforced or intended to adopt or enforce a policy of categorically refusing to prosecute specific criminal offenses under state law would create a rebuttable presumption that the prosecuting attorney had committed official misconduct.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2023, and would apply only to an action taken by a prosecuting attorney on or after the effective date.

**SUPPORTERS  
SAY:**

CSHB 17 would enhance accountability for prosecuting attorneys who fail to sufficiently defend Texas law. In recent years, concerns have been raised that some district attorneys (DAs) and county attorneys have adopted policies or issued public statements indicating a refusal to prosecute specific offenses. While prosecutorial discretion, or the authority to determine on a case by case basis whether to charge a crime, is essential to the functions of a prosecuting attorney's job, such discretion does not permit a prosecuting attorney to violate an oath or circumvent the Legislature's policy-making authority. CSHB 17 would address this issue by broadening the definition of official misconduct, specifying that an adoption or enforcement of a policy of categorically refusing to prosecute specific criminal offenses would be grounds for removal. This change would not unnecessarily limit prosecutorial discretion.

By strengthening the mechanism through which prosecuting attorneys are removed, CSHB 17 could increase public safety in the long term. Refusing to prosecute entire classes of crime could endanger public safety, as the possibility of punishment may be necessary to deter offenders. Without a sufficient deterrent, individuals may be more likely to commit a crime and reoffending could increase. Additionally, law enforcement could feel discouraged from making arrests for such offenses, knowing the charges would be dismissed by the prosecutor. By broadening the conduct that warrants a petition for removal, CSHB 17 could mitigate these community safety issues.

Although some have suggested that current processes for removal are sufficient, such processes rarely are used to remove a prosecuting attorney.

While prosecuting attorneys are accountable to the people and are up for election every four years, such recourse through the electoral system would not necessarily ensure that offenders were properly prosecuted, as

the general statute of limitations for felony offenses is three years.

CRITICS  
SAY:

The bill would be unnecessary because a mechanism for the removal of a prosecuting attorney already exists. The removal process allows for county-level elected officials to be removed from office for incompetency, intoxication, or official misconduct, which includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty. This mechanism is sufficient to address current concerns. State and federal law provide multiple pathways for prosecutorial accountability, including local elections, state bar discipline, criminal investigation, courts of inquiry, and in some cases, civil suits. Current remedies should be exhausted before creating new processes.

CSHB 17 could disincentivize elected prosecutors from communicating about office policies for fear of inviting removal petitions. The bill would establish a presumption that prosecuting attorneys have committed official misconduct if they made a public statement indicating they will refuse to prosecute a specific offense. This provision could decrease transparency, which could impact voters' ability to make informed decisions during elections. Additionally, the bill could put elected prosecutors at a disadvantage during elections, as an opponent might be able to speak to certain issues and priorities that an elected prosecutor may avoid out of reasonable apprehension.

Elected prosecutors are in the best position to understand and meet the needs of their constituents, and CSHB 17 could undermine a prosecutor's ability to take local concerns into consideration.