
DIGEST

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HB 709 Original

2018 Regular Session

Marcelle

Abstract: Establishes the State Commission on Prosecutorial Conduct and the Code of Prosecutorial Conduct.

Proposed law establishes the State Commission on Prosecutorial Conduct. Proposed law provides that the commission shall be composed 11 individuals including one court of appeal judge, two district court judges, three licensed attorneys, and five citizens that cannot be attorneys, judges, or elected officials. Each commission member shall serve a non-renewable term of four years. The commission shall convene at least once per quarter.

Proposed law requires the commission to review the conduct of the prosecutors upon the filing of a complaint with the commission, to determine whether the conduct violates certain present or proposed laws, case law, or rules of professional conduct.

Proposed law upon the recommendation of the commission, the Louisiana House of Representatives may institute the impeachment process. The Louisiana House of Representatives may disqualify a prosecutor from exercising any prosecutorial function. The impeachment shall be by the House and a trial by the Senate. The Senate may try an impeachment whether or not the House is in session.

Proposed law establishes duties of the commission. The commission is required to conduct hearings and investigations. The commission also has the ability to request and receive supporting documentation from courts, departments, state agencies, and boards. The commission is required to report annually to the governor, the House of Representatives, the Senate, and the chief justice of the Louisiana Supreme Court.

Proposed law grants the commission the ability to employ a chief executive officer and at least one special counsel.

Proposed law requires that complaints made to the commission must be submitted in writing, or reduced to writing, state the misconduct or incapacity complained of, and be signed by the complainant. Judges are required to report instances of prosecutorial misconduct observed in their courtroom. Prosecutors have the ability to self-report potential misconduct. Authorizes the commission to consider alleged misconduct or incapacity of a prosecutor from any source, including anonymous complaints and news reports.

Proposed law states that all complaints should be directed to the chief executive office of the

commission or to special counsel. Any member of the commission has the ability to receive a complaint or bring any matter to the attention of the commission on his own motion. Special counsel must maintain a docket of all complaints and screen out complaints that are deemed unfounded, frivolous, conclusory, or contradictory.

Proposed law requires the commission to respond to all complaints in writing; however, there is no requirement to respond to repetitive or abusive complaints.

Proposed law requires special counsel to send a copy of the complaint to respondent prosecutor. The commission may cause the investigation to be handled in any manner it deems proper. The respondent prosecutor will have the ability to respond to complaint. Provides for procedures to be used to implement proposed law.

Proposed law requires the chair to preside over all proceedings.

Proposed law provides that the commission is not bound by the present law rules of evidence and may admit material and relevant evidence, including hearsay.

Proposed law allows the Louisiana Supreme Court to designate sitting, former, or retired judges to serve as hearing officers to hear and report to the commission.

Proposed law requires each commission member and the chair to vote on each issue submitted to the commission. Proposed law prohibits voting by proxy by any commission member.

Proposed law requires confidentiality throughout the entire complaint process, and provides some exceptions to the general rule of confidentiality.

Proposed law requires the creation of the Code of Prosecutorial Conduct governing the following:

- (1) Functions of the prosecutor
- (2) Conflicts of interest
- (3) Public statements
- (4) Duty to respond to misconduct
- (5) Relations with police
- (6) Relations with the courts and bar
- (7) Prompt disposition of criminal charges
- (8) Literary or media agreements
- (9) Investigative function of prosecutor
- (10) Relations with victims and prospective witnesses
- (11) Relations with expert witnesses
- (12) Decision to charge
- (13) Relations with grand jury
- (14) Quality and scope of evidence before grand jury
- (15) Discretion in the charging decision
- (16) Role in first appearance and preliminary hearing

- (17) Disclosure of evidence by the prosecutor
- (18) Availability for plea discussions
- (19) Fulfillment of plea discussions
- (20) Calendar control
- (21) Courtroom professionalism
- (22) Selection of jurors
- (23) Relations with jury
- (24) Opening statement
- (25) Presentation of evidence
- (26) Examination of witnesses
- (27) Argument to the jury
- (28) Facts outside the record
- (29) Comments by prosecutor after verdict
- (30) Role in sentencing
- (31) Information relevant in sentencing

Proposed law provides for the commission to be responsible for the overseeing of district attorney-operated diversion programs statewide. The commission will have the ability to collect data related to individuals placed in district attorney-operated diversion programs directly from the district attorney's office in the applicable parish. The commission is responsible for annually publically reporting the accumulated data and conclusion reached.

Proposed law allows the commission to require every parish district attorney's office to develop a performance accountability program to provide for regular reporting to the citizens of this state. The accountability program requires the parish district attorney's office to institute yearly ethics training for all prosecutors. An annual report shall be generated and presented to the commission on or before April 1st of each year. The commission will provide a copy of the report to the governor, Senate, House of Representatives, and the La. Supreme Court. The report should then be published to the public.

Effective Jan. 1, 2019.

(Adds R.S. 13:5986-6011)