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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Williams

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SUMMARY

- Enacts a mechanism for the Attorney General's investigation and prosecution of cases regarding the death of an unarmed person caused by a peace officer.

DETAILED ANALYSIS

Investigation and prosecution by Attorney General of cases regarding the death of an unarmed person caused by a peace officer

Background

Currently, prosecutions of criminal offenses generally are handled by the prosecuting attorney of the county in which the offense occurred or, with respect to misdemeanor offenses occurring in the jurisdiction of a municipal court, generally by the city attorney or director of law of the municipal corporation having the ordinance that was violated (see "**Criminal prosecutions in general**," below). In several circumstances, though, the Revised Code provides for prosecution by the Attorney General (the AG) of a specific type of criminal offense (see "**Criminal prosecutions in general**," below). The bill adds another specific type of criminal case to be prosecuted by the AG, by enacting a mechanism for the AG's investigation and prosecution of cases regarding the death of an unarmed person caused by a peace officer.

Investigation by Attorney General

The bill requires the AG to investigate the death of an unarmed person caused by a "peace officer" engaged in the officer's duties, regardless of whether the person was in "detention" (see "**Definitions**," below for the meanings of the terms in quotation marks) at the time of the action that resulted in the person's death. If the AG believes that there is a significant question as to whether a person whose death was caused by a peace officer was armed and dangerous at the time of the action that resulted in the person's death, the AG may investigate the death of that person, under the bill's mechanism. The bill specifies that the AG

must conduct a full, reasoned, and independent investigation, including gathering and analyzing evidence, conducting witness interviews, and reviewing investigative reports, scientific evidence, and audio and video recording.¹

The bill specifies that the AG has exclusive supervision and control of all investigations conducted under the bill's mechanism. In conducting an investigation, the AG and any assistant AG or special counsel designated by the AG (hereafter, "special counsel") has all rights, privileges, powers, and duties of a prosecuting attorney, including the power to issue subpoenas and subpoenas *duces tecum*, to compel the attendance of witnesses, and to compel the production of records and papers of all kinds and descriptions that are relevant to the investigation. Upon the failure of any person to comply with a subpoena or subpoena *duces tecum* issued under the mechanism, the AG, assistant AG, or special counsel may apply to the court of common pleas of Franklin County or of any county in which an element of the crime occurred for a contempt order.²

Grand jury proceedings

Under the bill's mechanism, when it appears to the AG, as a result of an investigation under the provisions described above, that a prosecution should be commenced, the AG must refer the evidence to a grand jury or special grand jury, under the statutory provisions pertaining to them.³ The AG and any assistant AG or special counsel may appear at any time before the grand jury to give information relative to a legal matter or to advise upon a legal matter when required. The AG and any assistant AG or special counsel has and may exercise all rights, privileges, and powers of a "prosecutor" (see "**Definitions**," below) in such cases.⁴

Prosecution

Under the bill's mechanism, if an indictment is returned by a grand jury pursuant to a referral made under the bill's mechanism, as described above, the AG has sole responsibility to prosecute the case. When prosecuting the case, the AG and any assistant AG or special counsel has all rights, privileges, duties, and powers of a prosecutor.⁵

Preemption of prosecutor's authority

The bill states that the AG's authority to conduct an investigation under its mechanism and to prosecute related crimes supersedes the authority of any other prosecutor to investigate

¹ R.C. 109.021(B)(1) and (2).

² R.C. 109.021(B)(3).

³ R.C. 2939.01 to 2939.24, not in the bill.

⁴ R.C. 109.021(C).

⁵ R.C. 109.021(D).

the death in these circumstances and to prosecute related crimes. Instead, a prosecutor has only those powers and duties the AG designates.⁶

Report to Governor

The bill requires the AG to provide a report to the Governor or the Governor's designee if either of the following applies: (1) the AG declines to refer evidence to a grand jury regarding a death investigated under the bill's mechanism, or (2) a grand jury declines to return an indictment on evidence referred to the grand jury under the mechanism. The report must include, to the extent possible and lawful, an explanation of the outcome of the investigation and any resulting recommendations for systemic reform.⁷

Definitions

For purposes of the bill's mechanism:⁸

"Detention" means any of the following:

1. Arrest or confinement in a vehicle subsequent to an arrest;
2. Confinement in a public or private facility for custody of persons charged with or convicted of crime or alleged or found to be a delinquent child or unruly child;
3. Hospitalization, institutionalization, or confinement in a public or private facility that is ordered regarding a plea or finding of not guilty by reason of insanity or incompetent to stand trial;
4. Confinement in a vehicle for transportation to or from any facility of any nature described above;
5. Detention for extradition or deportation;
6. Except as otherwise described in this definition, supervision by an employee of any facility of any nature described above that is incidental to hospitalization, institutionalization, or confinement in the facility but that occurs outside the facility;
7. Supervision by an employee of the Department of Rehabilitation and Correction of a person on any type of release from a prison;
8. Confinement in a vehicle, airplane, or place while being returned from outside of Ohio into Ohio by a private person or entity pursuant to a contract; or
9. For a person confined in a county jail who participates in a county jail industry program, "detention" includes time spent at an assigned work site and going to and from the work site.

⁶ R.C. 109.021(E).

⁷ R.C. 109.021(F).

⁸ R.C. 109.021(A); R.C. 109.71 and 2921.01, not in the bill.

“Peace officer” means:

1. A deputy sheriff, marshal, deputy marshal, township or municipal police officer, metropolitan housing authority police officer, or township constable, who is commissioned and employed as a peace officer by a political subdivision of the state or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce state laws, municipal ordinances, township resolutions, or county or township regulations;
2. A police officer employed by a railroad company and appointed and commissioned by the Secretary of State;
3. A Department of Taxation employee engaged in the enforcement of the Tax Laws and designated by the Tax Commissioner for peace officer training;
4. An undercover drug agent;
5. A Department of Public Safety enforcement agent who the Director of Public Safety designates;
6. A Department of Natural Resources natural resources law enforcement staff officer, natural resources officer, forest-fire investigator, or wildlife officer;
7. A designated employee of a specified park district;
8. A designated employee of a conservancy district;
9. A police officer employed by a hospital that employs and maintains its own proprietary police department or security department, and appointed and commissioned by the Secretary of State;
10. A veterans’ homes police officer;
11. A qualified nonprofit corporation police officer;
12. A state university law enforcement officer who has been awarded a certificate attesting to the person’s satisfactory completion of an approved peace officer basic training program;
13. A special police officer employed by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities;
14. A member of a campus police department;
15. A regional transit authority police officer;
16. An investigator appointed by the Auditor of State and engaged in the enforcement of R.C. Chapter 117;
17. A special police officer designated by the Superintendent of the State Highway Patrol who has been awarded a certificate attesting to the person’s satisfactory completion of an approved peace officer basic training program;

18. A port authority special police officer who has been awarded a certificate attesting to the person's satisfactory completion of an approved peace officer basic training program;
19. A municipal special police officer who has been awarded a certificate for satisfactory completion of an approved peace officer basic training program and who is employed at a municipal airport or other municipal air navigation facility in specified circumstances;
20. A police officer employed by an owner or operator of an amusement park that has an average yearly attendance in excess of 600,000 guests and that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court;
21. A police officer employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, who has been appointed and commissioned by the Secretary of State and who has been awarded a certificate attesting to the person's satisfactory completion of a peace officer basic training program;
22. A Bureau of Criminal Identification and Investigation investigator who is commissioned by the Bureau's Superintendent as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers;
23. A state fire marshal law enforcement officer who has been awarded a certificate attesting to the person's satisfactory completion of an approved peace officer basic training program;
24. A Casino Control Commission gaming agent; or
25. An employee of the State Board of Pharmacy designated by the Board's Executive Director to investigate violations of controlled substance-related laws and rules.

Prosecutor means the county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer, who has the authority to prosecute a criminal case in the court in which the case is filed.

Criminal prosecutions in general

Under existing law, if a person commits a violation of a criminal prohibition set forth in the Revised Code, the prosecuting attorney of the county in which the offense occurs typically has the authority to prosecute the offense. The Revised Code specifies that the prosecuting attorney serving a county may inquire into the commission of crimes within the county, and that the prosecuting attorney must prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party (this includes offenses under the Revised Code),

except for those required to be prosecuted by a special prosecutor or the AG under specified provisions of law.⁹

Also, in cities that are served by municipal courts, which is where misdemeanors are prosecuted, the city attorney or director of law handles the cases, with a few exceptions for certain countywide courts, where the county prosecutor handles the cases, and for counties in which the city and county agree to have the county prosecutor handle the cases.¹⁰ In county courts, which exist in several counties, it appears that county prosecutors generally handle criminal cases.

Regarding the general duty of prosecuting attorneys with respect to criminal prosecutions, the Revised Code currently sets forth several circumstances in which the General Assembly has given the AG the authority to prosecute certain types of criminal offenses, notwithstanding the typical prosecution of offenses by the prosecuting attorney. Examples include: (1) the investigation and prosecution of organized criminal activity in specified circumstances,¹¹ (2) the investigation and prosecution of criminal or improper activity regarding workers' compensation matters in specified circumstances,¹² (3) the investigation and prosecution of criminal or improper activity related to Medicaid matters,¹³ (4) the investigation and prosecution of activities in violation of the statute setting forth patient abuse crimes,¹⁴ and (5) the prosecution of criminal election fraud matters.¹⁵ Under some of the provisions, the AG has the option of referring the matters to the appropriate prosecuting attorney, but in others, the AG must initially refer the matter to the appropriate prosecuting attorney and the AG cannot prosecute the matter unless the prosecuting attorney fails or declines to act.

HISTORY

Action	Date
Introduced	02-23-21

S0086-I-134/ar

⁹ R.C. 309.08, not in the bill.

¹⁰ R.C. 1901.34, not in the bill.

¹¹ R.C. 109.83, not in the bill.

¹² R.C. 109.84, not in the bill.

¹³ R.C. 109.85, not in the bill.

¹⁴ R.C. 109.86, not in the bill.

¹⁵ R.C. 109.95, not in the bill.