

BILL ANALYSIS

Senate Research Center
82R15870 NAJ-F

H.B. 1638
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Criminal Justice
5/13/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1638 adds a provision to disqualify a district or county attorney from representing the state if the district or county attorney is the subject of an official criminal investigation. Currently there is no statutory means to prosecute a district or county attorney for a criminal act committed within the district or county attorney's jurisdiction.

This bill would address cases within a district or county attorney's jurisdiction, and would not impact criminal allegations in another district attorney's jurisdictions.

A disqualifier under this bill applies only to the attorney's access to the criminal investigation pending against the attorney and to any prosecution of a criminal charge resulting from that investigation.

H.B. 1638 amends current law relating to the disqualification of a district or county attorney who is the subject of a criminal investigation.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 2.08, Code of Criminal Procedure, as follows:

Art. 2.08. DISQUALIFIED. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires a judge of a court in which a district or county attorney represents the state to declare the district or county attorney disqualified for purposes of Article 2.07 (Attorney Pro Tem) on a showing that the attorney, as a result of credible evidence of criminal misconduct, is the subject of a criminal investigation for an offense that is within the attorney's authority to prosecute. Provides that a disqualification under this subsection applies only to the attorney's access to the criminal investigation pending against the attorney and to any prosecution of a criminal charge resulting from that investigation.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.