

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



**PA 21-8—sSB 892**  
*Judiciary Committee*

**AN ACT CONCERNING THE CRIMINAL JUSTICE COMMISSION,  
DIVISION OF CRIMINAL JUSTICE AND THE OFFICE OF THE  
INSPECTOR GENERAL**

**SUMMARY:** This act, among other things, amends the process for nominating the inspector general and restructures the Office of the Inspector General (OIG) by making it a separate, rather than an independent, office within the Division of Criminal Justice (DCJ). By law, the inspector general investigates peace officers' use of force and prosecutes cases to determine whether use of force was justified. The act requires the Criminal Justice Commission (CJC, see **BACKGROUND**) to appoint, rather than nominate, one deputy chief state's attorney to serve as inspector general and eliminates General Assembly confirmation.

Additionally, the act amends the process for nominating CJC members by requiring a referral to the Judiciary Committee rather than the Executive and Legislative Nominations Committee. It also gives CJC more oversight of DCJ by:

1. requiring the chief state's attorney to notify CJC whenever there are certain promotions;
2. allowing CJC to determine how many DCJ recommendations CJC must receive for each attorney appointment vacancy;
3. adding a CJC-designated, nonvoting member to the DCJ Advisory Board;
4. allowing CJC to call state's attorneys before the commission for questions related to their merit and performance rating; and
5. amending how special state's attorneys and prosecutors are appointed.

Lastly, the act makes minor, technical, and conforming changes.

**EFFECTIVE DATE:** October 1, 2021, except the provisions on the inspector general, promotions, and vacancies are effective upon passage.

**INSPECTOR GENERAL**

*Appointment*

Under the act, CJC must appoint, rather than nominate, one deputy chief state's attorney to serve as inspector general, who receives his or her prosecutorial authority as the chief state's attorney's designee. Under prior law, the commission nominated, and the General Assembly confirmed, the inspector general. The act eliminates the requirement for General Assembly confirmation.

Under the act, CJC must make the inspector general appointment by majority vote. If there is a tie, the commission chairperson must select the nominee from the candidates who are tied. The act requires the commission to make this appointment by October 1, 2021.

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The act specifies that the inspector general's term begins July 1 in the year he or she is appointed. It lasts for four years unless the commission removes him or her sooner.

### *Office of Inspector General*

PA 20-1, July Special Session, §§ 33 & 46, established OIG within DCJ to, among other things, investigate peace officers' use of force and prosecute cases to determine whether use of force was justified.

The act amends the structure of OIG, by making it a separate, rather than an independent, office within DCJ. As under existing law, OIG must be at a location separate from the Office of the Chief State's Attorney or any of the state's attorneys for the judicial districts.

Under the act, the inspector general may employ necessary staff, selecting them from within the confines of any existing collective bargaining agreements. Prior law required the inspector general to select staff only from DCJ staff.

The act also eliminates the requirement that the inspector general and any OIG staff not in a state employee bargaining unit be transferred back to DCJ upon completing employment with OIG.

### *Use of Force Investigations*

Prior law required the inspector general to investigate and determine whether a peace officer's use of force was justified. The act instead requires DCJ to cause the investigation to be made and the inspector general to determine whether the use of force was justified.

### *Investigation or Prosecution Standard*

Under prior law, the inspector general was required to investigate and determine whether a deceased person died as a result of possible criminal action while in the custody of a peace officer, law enforcement agency, or the Department of Correction. If so, the inspector general had to refer the case to DCJ for possible prosecution. The act instead requires the inspector general to determine if the person may have died as a result of criminal action while in custody and, if so, refer the case to the chief state's attorney or state's attorney.

Prior law required the inspector general to request law enforcement assistance when needed to determine the circumstances of an incident. The act instead requires the inspector general to seek assistance when needed to investigate and make a determination about an incident (i.e., a peace officer's deadly use of force or when someone dies in custody).

### *Preliminary Status Report*

By law, the inspector general must complete a preliminary status report when officers use physical force that causes another's death. The act also requires the

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inspector general to complete a preliminary status report when officers use deadly force on another. As under existing law, the report must include the following information:

1. deceased person's name, gender, race, ethnicity, and age;
2. date, time, and location of the injury causing the death;
3. law enforcement agency involved;
4. toxicology report status, if available; and
5. death certificate, if available.

Prior law required the report to be submitted to the Judiciary and Public Safety and Security committees within five business days after the cause of death was available. The act specifies that the deadline is five business days after this information is available to the chief state's attorney.

### *Final Report*

Under prior law, the inspector general had to file a report with the chief state's attorney at the conclusion of the investigation that included, among other things, any future action OIG would take as a result of the incident. The act narrows this to any recommended future action for OIG to take.

## CRIMINAL JUSTICE COMMISSION

### *Nominations to Judiciary Committee*

Beginning October 1, 2021, the act requires each of the governor's CJC member nominations to be referred, without debate, to the Judiciary Committee instead of the Executive and Legislative Nominations Committee. The Judiciary Committee must report on each appointment within 30 days after the referral. Each General Assembly appointment of a CJC member must be by concurrent resolution.

Under the act, any member serving on the commission on October 1, 2021, may continue to serve until his or her term expires.

### *Promotions*

By law, the chief state's attorney may promote any assistant state's attorney or deputy assistant state's attorney who assists him. The appropriate state's attorney also may promote any assistant state's attorney or deputy assistant state's attorney who assists him or her in the judicial district. The act requires the chief state's attorney to notify CJC of any of these promotions.

### *Vacancies*

By law, when there is a vacancy within the Chief State's Attorney's Office or the office of a state's attorney, CJC must make an appointment from various recommendations from these offices. The act requires CJC to determine how

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many recommendations it must require for each attorney appointment vacancy.  
*DCJ Advisory Board*

The act adds a CJC-designated, nonvoting member to the DCJ Advisory Board. The board already includes the chief state's attorney or his designee and the state's attorney for each judicial district, or each attorney's designee. By law, the board must meet at least once a month to advise on statewide prosecutorial standards and guidelines and other policy matters, including peer review and conflict resolutions.

### *Merit and Performance Rating*

The act requires that each state's attorney's merit and performance rating occur biennially and be conducted pursuant to DCJ policy. Prior law did not specify the frequency of the ratings. As under existing law, the chief state's attorney or the state's attorney preparing a rating must submit it to CJC for its consideration when reappointing an attorney to a new term.

The act also allows CJC to call a state's attorney before the commission for questions related to any issue raised in a biennial merit and performance rating.

### *Special State's Attorneys and Prosecutors*

Under prior law, the chief state's attorney could appoint special assistant state's attorneys, special deputy assistant state's attorneys, and special inspectors on a contractual basis for a temporary period. But under the act, the chief state's attorney instead may make recommendations to CJC, which then appoints these attorneys.

## BACKGROUND

### *Criminal Justice Commission*

The state constitution (art. IV, § 27) establishes the Criminal Justice Commission and charges it with appointing a state's attorney for each judicial district and other attorneys as prescribed by law. It consists of seven members: the chief state's attorney and six members appointed by the governor and confirmed by the General Assembly. Two of the appointed members must be Superior Court judges.