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## **OLR Bill Analysis**

### **sSB 307**

#### ***AN ACT CONCERNING PROSECUTORIAL ACCOUNTABILITY.***

#### **SUMMARY**

This bill makes several changes in laws governing the Criminal Justice Commission (the “commission”) and state’s attorneys. Specifically, it does the following:

1. transfers the commission from within the Division of Criminal Justice (DCJ) and into the Office of Governmental Accountability (OGA), and adds the commission chairperson or his designee to the Governmental Accountability Commission (GAC) (§§ 1 & 8-9);
2. shortens the length of state’s attorneys’ terms of office from eight to five years and requires the commission to biennially evaluate the state’s attorney’s performance (§ 2);
3. expands the types of disciplinary action the commission may take against the chief state’s attorney to include reprimand, demotion, or suspension, in addition to removal from office as under current law (§ 3);
4. requires the commission’s advisory board to develop recommended policies by November 1, 2023, to increase efficiency, ensure fairness, and eliminate bias across judicial districts (§ 4);
5. expands the topics that the chief state’s attorney must include in his or her initial and ongoing training programs for prosecuting attorneys (e.g., racial bias and victim interview techniques) (§ 5);
6. requires OGA to biennially prepare a judicial district performance report for each state’s attorney that must include

collected, disaggregated, case level prosecutorial data (§§ 6 & 8);  
and

7. expands the list of required data that the commission must collect to include use of force investigations by the Office of the Inspector General and requires the commission to report the information to OGA to assist in preparing judicial district performance reports (§ 7).

EFFECTIVE DATE: October 1, 2022, except the provision (1) requiring the commission's advisory board to develop uniform polices takes effect upon passage and (2) expanding the types of disciplinary actions the commission may take against the chief state's attorney takes effect July 1, 2022.

#### **§§ 1 & 8-9 — OFFICE OF GOVERNMENTAL ACCOUNTABILITY**

The bill transfers the commission from within DCJ to OGA and makes related technical and conforming changes.

Under existing law, OGA consists of independent divisions for which it provides consolidated personnel, payroll, affirmative action, and administrative and business office functions, including information technology associated with these functions. The divisions have independent decision-making authority, including decisions on budgetary issues and employing necessary staff. The bill requires OGA to also provide these services and administrative support to the commission.

Additionally, the bill adds to the GAC the commission's chairperson or his designee. By law, GAC is within OGA and is responsible for (1) recommending OGA executive administrator candidates to the governor and (2) terminating the executive administrator's employment, if necessary.

#### **§ 2 — STATE'S ATTORNEY TERM AND PERFORMANCE REVIEW**

The bill shortens a state's attorney's term of office from eight to five years. As under existing law, the term begins July 1 and lasts until the appointment and qualification of a successor unless he or she is

removed for just cause.

Beginning July 1, 2023, the bill requires the commission to biennially evaluate the performance of each state's attorney. By law, the chief state's attorney and each state's attorney must biennially prepare a merit and performance rating for each state's attorney, assistant state's attorney, and deputy assistant state's attorney to the commission for its consideration when considering attorney reappointments (CGS § 51-280).

### **§ 3 — CHIEF STATE'S ATTORNEY DISCIPLINE**

The bill expands the type of disciplinary actions the commission may take against the chief state's attorney to include reprimand, demotion, or suspension (with or without pay for up to 15 days), instead of only removal from office as under current law.

Existing law already allows the commission to take such disciplinary action against deputy chief state's attorneys and state's attorneys. As under existing law, the commission may take this disciplinary action only for good cause and after notice and a hearing.

### **§ 4 — UNIFORM POLICIES**

By law, the DCJ Advisory Board meets monthly to advise on statewide prosecutorial standards, guidelines, and other policy matters (e.g., peer review and conflict resolution) (CGS § 51-279a).

The bill requires the advisory board to develop recommended policies by November 1, 2023, to increase efficiency, ensure fairness, and eliminate bias across judicial districts. The policies must address the following issues:

1. preliminary criminal case decisions, including (a) initiating charges, (b) charging juveniles as adults, (c) the standard of proof required to initiate and maintain charges, and (d) reviewing investigatory and discovery materials before charging;
2. compliance with and enforcement of a victim's state constitutional rights;

3. case management and staffing, including transfer, continuance, and staffing standards;
4. uniform prosecutorial ethics standards in addition to the ethical standards that apply to all attorneys;
5. the use of grand juries for investigations;
6. circumstances and procedures for deviating from these policies;
7. a uniform assessment tool for conducting annual performance evaluations for all deputy assistant state's attorneys, assistant state's attorneys, senior assistant state's attorneys, supervisory assistant state's attorneys, and any other prosecuting attorneys;
8. uniform prosecutorial ethics and general ethical standards for all attorneys, including (a) adopting a comprehensive code of ethics for state's attorneys and prosecuting attorneys based on national best practices; (b) establishing a process for tracking ethical compliance oversight of prosecuting attorneys within the state's attorney's judicial district; and (c) adopting a process for tracking, monitoring, and correcting ethical complaints against or violations by prosecuting attorneys within the state attorney's judicial district; and
9. any other issues the advisory board deems necessary.

The bill requires the advisory board to report its recommended policies to the Judiciary Committee by February 1, 2024.

#### **§ 5 — STATE'S ATTORNEY TRAINING**

By law, the chief state's attorney must establish a formal five-day training program for all newly appointed prosecuting attorneys and an ongoing annual two-day training program. Beginning on July 1, 2023, the bill requires these programs to include training on the following topics:

1. racial bias, including implicit bias;

2. systemic collateral consequences of arrest, charging, and incarceration;
3. available conviction and sentencing alternatives;
4. victim interview techniques;
5. mental illness and trauma; and
6. reentry strategies for offenders released into the community.

The bill requires at least one day of each training program to be held in a state correctional facility.

### **§§ 6 & 8 — JUDICIAL DISTRICT PERFORMANCE REVIEW**

The bill requires OGA to biennially prepare a judicial district performance report for each state's attorney that includes collected, disaggregated, case level prosecutorial data. It must provide the performance reports to the commission biennially, as follows:

1. by July 1, 2023, for the judicial districts of New Britain, Ansonia-Milford, Middlesex, Stamford-Norwalk, Hartford, and Waterbury and
2. by July 1, 2024, for the judicial districts of Danbury, Fairfield, Litchfield, New Haven, New London, Tolland, and Windham.

Under the bill, the commission must also (1) provide each report to the state's attorney who is the report's subject and (2) post the report to the commission's website on the same day it receives the report. The commission must review each judicial district's report and give the state's attorney an opportunity to explain any discrepancies between the judicial districts or past and present performance.

The bill permits the commission to consider its performance reviews and the OGA reports themselves when considering a state's attorney for reappointment.

## **§ 7 — DISAGGREGATED CASE LEVEL DATA**

By law, the commission, in consultation with the judicial branch, correction department, and Criminal Justice Information System Governing Board, must collect disaggregated, case level data by docket number on defendants who are age 18 or older at the time they committed certain alleged offenses (e.g., arrests, dispositions, or nonjudicial sanctions). The bill expands the list of required data collected to include use of force investigations by the Office of the Inspector General.

As under existing law, information that personally identifies a victim cannot be disclosed when the Office of Policy and Management makes its required presentation on existing prosecutorial data to the Judicial Committee (CCS § 4-68ff).

The bill also requires the commission to compile and report the above information for each judicial district to OGA to assist in its judicial performance report preparation (see § 6).

## **BACKGROUND**

### ***Related Bill***

sHB 5499, reported favorably by the Judiciary Committee, similarly expands the types of disciplinary action the Criminal Justice Commission may take against the chief state's attorney.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 16 (03/31/2022)