

HOUSE BILL ANALYSIS

HB 2769

Title: An act relating to reporting felonies committed by state employees.

Brief Description: Establishing procedure for reporting felonies by state employees.

Sponsors: Representatives Clements, Sheahan, Zellinsky, Wensman, McMorris, Honeyford, Lisk, Sterk, Lambert and Mulliken.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: Generally, there is no statute requiring a person who suspects that a crime has been committed to report the alleged crime to law enforcement. A person who witnesses the actual commission of a violent offense, a sexual offense against a child or an attempt to commit such an offense, or an assault of a child that appears reasonably likely to cause substantial bodily harm, must notify the prosecuting attorney, law enforcement agency, medical assistance, or other public official as soon as reasonably possible. Failure to report is a gross misdemeanor. A person is not required to report where the person has a reasonable belief that making a report would place the person or another in danger of immediate physical harm.

The attorney general's administrative policy provides that when the attorney general receives a report that a state employee has engaged in criminal misconduct related to the employee's job, the attorney general must notify the head of the public agency where the employee works. The division chief of the criminal division in the Office of the Attorney General will contact the appropriate public attorney responsible for prosecuting crimes in the jurisdiction. The attorney general has discretion in determining how and when the steps in its administrative policy may be taken.

Prosecutors have discretion when charging a defendant with a crime, and may even decide not to charge certain offenses. The Sentencing Reform Act contains recommended standards to offer guidance to prosecutors. One guideline provides that a prosecuting attorney may decline to prosecute in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law, or would result in decreased respect for the law.

Summary of Bill: Under certain circumstances, state employees are required to report felonious acts of other state employees.

A state employee who, after an investigation conducted by or at the request of a state employee, has reasonable cause to believe that another state employee has committed a felony must report the incident to law enforcement or the local prosecutor. If the felony is categorized as a crime against persons (as listed in the recommended prosecuting standards), the employee knows the victim's identity, and knows that the victim objects to the report being made, the employee must report the incident to the attorney general. The state employee must make the required report within 72 hours after having reasonable cause to believe that a felony was committed.

After receiving a report from a state employee, the attorney general must inform the victim that the report will remain confidential and that the attorney general will not report to law enforcement or the local prosecutor for 72 hours. The attorney general must also inform the victim of the consequences of reporting the crime, and the legal, counseling, and support services available to the victim. The attorney general must report the crime after 72 hours if the victim remains unwilling to report it, unless the victim: (a) agrees in writing to hold the state harmless for any action arising out of the state's failure to report; (b) the circumstances meet the prosecutor's recommended standards regarding when not to prosecute; and (c) failing to report would not jeopardize the safety of society.

If the attorney general does not report the crime, the attorney general must notify the victim, the state employee who first reported the crime, the Speaker of the House of Representatives, and the Senate Majority Leader of the attorney general's decision. The attorney general must ensure that the identity of the state employee who reported the crime remains confidential. A person who intentionally fails to report is guilty of a gross misdemeanor.

A state employee making a report in good faith is immune from any liability arising out of the reporting. This immunity does not apply if the state employee maliciously makes a false report. The public employer of the reporting employee must defend the employee in any action based on the employee's report if the employee made the report in good faith and without gross negligence.

Fiscal Note: Requested January 30, 1998.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research