

TITLE 2. JUDICIAL BRANCH  
SUBTITLE C. PROSECUTING ATTORNEYS  
CHAPTER 46. PROFESSIONAL PROSECUTORS

Sec. 46.001. DEFINITIONS. In this chapter:

(1) "County prosecutor" means a constitutional county attorney who does not have general felony jurisdiction and who is not a state prosecutor.

(2) "Benchmark salary" means the salary that is provided for a district judge in the General Appropriations Act.

(3) "State prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of district attorney who serves in a district or county listed in Section 46.002.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.002. PROSECUTORS SUBJECT TO CHAPTER. This chapter applies to all county prosecutors and to the following state prosecutors:

Text of subd. (1) effective until January 1, 2009

(1) the district attorneys for the 1st, 2nd, 8th, 9th, 12th, 18th, 21st, 23rd, 25th, 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 42nd, 43rd, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 83rd, 84th, 85th, 88th, 90th, 97th, 100th, 105th, 106th, 110th, 112th, 118th, 119th, 123rd, 142nd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th, 268th, 271st, 278th, 286th, 329th, 349th, and 355th judicial districts;

Text of subd. (1) effective January 1, 2009

(1) the district attorneys for the 1st, 2nd, 8th, 9th, 12th, 18th, 21st, 23rd, 25th, 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 42nd, 43rd, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 81st, 83rd, 84th, 85th, 88th, 90th, 97th, 100th, 105th, 106th, 110th, 112th, 118th, 119th, 123rd, 142nd, 145th, 156th, 159th, 173rd, 196th, 198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th, 268th, 271st, 278th, 286th, 329th, 344th, 349th, and 355th judicial districts;

(2) the criminal district attorneys for the counties of Anderson, Austin, Bastrop, Bexar, Bowie, Brazoria, Caldwell, Calhoun, Cass, Collin, Comal, Dallas, Deaf Smith, Denton, Eastland, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Lubbock, McLennan, Madison, Navarro, Newton, Panola, Polk, Randall, Rockwall, San Jacinto, Smith, Tarrant, Taylor, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Wichita, Wood, and Yoakum; and

(3) the county attorneys performing the duties of district attorneys in the counties of Andrews, Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls, Fannin, Freestone, Lamar, Lamb, Lampasas, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Orange, Rains, Red River, Robertson, Rusk, Terry, Webb, and Willacy.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, Sec. 2.64(a), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1045, Sec. 2, eff. Jan. 1, 1989; Acts 1989, 71st Leg., ch. 216, Sec. 3, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 373, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 811, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1099, Sec. 4, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 8, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 8, Sec. 2, eff. Jan. 1, 1993; Acts 1991, 72nd Leg., 1st C.S., ch. 8, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 42, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 565, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 762, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 819, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 100, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 202, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 457, Sec. 4, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 704, Sec. 27, eff. Jan. 1, 1995; Acts 1997, 75th Leg., ch. 378, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 412, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 720, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 727, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 739, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 853, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1290, Sec. 1, eff. June 20, 1997; Acts 1997, 75th

Leg., ch. 1352, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1448, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 674, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 989, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1463, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 174, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 482, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 989, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 716, Sec. 3, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 792, Sec. 1, eff. Jan. 1, 2005; Acts 2003, 78th Leg., ch. 1256, Sec. 1, eff. Jan. 1, 2005; Acts 2005, 79th Leg., ch. 80, Sec. 1, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 734, Sec. 3, eff. Jan. 1, 2009.

Sec. 46.003. COMPENSATION OF STATE PROSECUTORS. (a) Each state prosecutor is entitled to receive from the state compensation equal to the compensation that is provided for a district judge in the General Appropriations Act.

(b) A commissioners court may supplement the state prosecutor's state salary but may not pay the state prosecutor an amount less than the compensation it pays its highest paid district judge.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 1254, Sec. 2, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.0031. COMPENSATION OF COUNTY PROSECUTORS. (a) Except as provided by Subsection (b), each county that has a county prosecutor is entitled to receive from the state supplemental salary compensation to be paid by the county to the county prosecutor in an amount equal to the amount that is one-half of the benchmark salary divided by the total number of counties served by the state prosecutor, unless that formula would result in an amount less than one-sixth of the benchmark salary, in which case the county prosecutor is entitled to receive one-sixth of the benchmark salary. A county with no county prosecutor is not entitled to receive the salary supplement funds provided by this section.

(b) For a county with more than one state prosecutor who serves that county, the supplemental salary compensation for the county prosecutor is computed by:

(1) determining the amount of compensation as provided by Subsection (a) in relation to each state prosecutor as if that state prosecutor is the only state prosecutor who serves the county;

(2) adding the amounts of compensation determined under Subdivision (1); and

(3) setting the amount of compensation at the lesser of:

(A) the sum of those amounts; or

(B) one-half of the benchmark rate.

(c) If the receipt of compensation under this section causes the gross salary of a county prosecutor to exceed the benchmark salary, or if any amount of the compensation is waived by the prosecutor, the excess or waived amount shall be used for expenses of the county prosecutor's office.

(d) At least annually the comptroller shall pay to the salary fund of each county that is entitled to receive funds under this section an amount authorized under this section to supplement the salary of the county prosecutor.

(e) A county attorney who does not have criminal prosecution duties or who has criminal prosecution duties only upon request of the district attorney is entitled to receive from the state supplemental salary compensation that is equal to one-half the amount the county attorney would be eligible for under Subsection (a) or (b). The remainder of the supplement shall be used for expenses of the county attorney's office. This subsection does not apply to a county attorney who is responsible for the prosecution of juvenile justice cases under Title 3, Family Code.

Added by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.004. EXPENSES. (a) Each state prosecutor is entitled to receive not less than \$22,500 a year from the state to be used by the prosecutor to help defray the salaries and expenses of the office. That money may not be used to supplement the prosecutor's salary.

(b) Each state prosecutor shall submit annually to the comptroller of public accounts a sworn account showing how this money was spent during the year.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.005. LIMITATIONS ON LAW PRACTICE. (a) A state prosecutor may not engage in the private practice of law but may complete all civil cases that are not in conflict with the interest of any of the counties of the district in which the prosecutor serves and that are pending in court before the prosecutor takes office.

(b) A state prosecutor may not accept a fee from an attorney to whom the prosecutor has referred a case.

(c) This section applies to a county prosecutor and any assistant of a prosecutor if, from all state and county funds received, the county prosecutor or assistant receives a salary that is equal to or more than 80 percent of the benchmark salary.

(d) This section does not apply to a county prosecutor who files with the county auditor an annual written waiver of the amount of compensation that is equal to or exceeds 80 percent of the benchmark salary. An amount waived under this subsection shall be used for expenses of the county prosecutor's office.

(e) This section does not apply to a county prosecutor who, before September 1, 1999, was paid in excess of the benchmark salary by the county in which the prosecutor serves.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.006. PURPOSE; DUTY OF COUNTY. (a) It is the purpose of this chapter to increase the effectiveness of law enforcement in this state and to increase the funds available for use in prosecution at both the felony and misdemeanor levels.

(b) The commissioners court in each county that has a prosecutor subject to this chapter may not reduce the county funds provided for the salary or office of the prosecutor as a result of the funds provided by this chapter.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.

Sec. 46.007. INELIGIBILITY FOR CERTAIN OTHER STATE FUNDS. Subchapter C, Chapter 41, does not apply to a county if the county is served by a state prosecutor who serves in a district or county listed in Section 46.002.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1570, Sec. 1, eff. Sept. 1, 1999.