

GOVERNMENT CODE
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 state annual salary as set by the General Appropriations Act in accordance with Section [659.012](#) paid to a district judge with comparable years of service as the county prosecutor.

(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](#).

(4) "State prosecuting attorney" means the state prosecuting attorney appointed under Chapter [42](#).

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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. [497](#)), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1121 (H.B. [2384](#)), Sec. 9, eff. September 1, 2019.

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

(1) the district attorneys for Kenedy and Kleberg Counties and for the 1st, 2nd, 8th, 9th, 18th, 21st, 23rd, 24th, 26th, 27th, 29th, 31st, 32nd, 33rd, 34th, 35th, 36th, 38th, 39th, 42nd, 43rd, 46th, 47th, 49th, 50th, 51st, 52nd, 53rd, 63rd, 64th, 66th, 69th, 70th, 76th, 79th, 81st, 83rd, 84th, 85th, 88th, 90th, 97th, 100th, 105th, 106th, 109th, 110th, 112th, 118th, 119th, 123rd, 132nd, 142nd, 143rd, 145th, 156th, 159th, 173rd, 196th,

198th, 216th, 220th, 229th, 235th, 253rd, 258th, 259th, 266th, 268th, 271st, 286th, 287th, 329th, 344th, 349th, 355th, 369th, 452nd, and 506th 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, Fannin, Galveston, Grayson, Gregg, Harrison, Hays, Hidalgo, Jasper, Jefferson, Kaufman, Kendall, Lubbock, McLennan, Madison, Medina, 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, Aransas, Burleson, Callahan, Cameron, Castro, Colorado, Crosby, Ellis, Falls, Freestone, Gonzales, Guadalupe, Lamar, Lamb, Lampasas, Lavaca, Lee, Limestone, Marion, Milam, Morris, Ochiltree, Oldham, Orange, Rains, Red River, Robertson, Rusk, Swisher, 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.

Amended by:

Acts 2005, 79th Leg., Ch. 80 (S.B. [441](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 734 (H.B. [2569](#)), Sec. 3, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 77 (H.B. [622](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 77 (H.B. [622](#)), Sec. 2, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. [497](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. [497](#)), Sec. 3, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 277 (H.B. [421](#)), Sec. 3, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 318 (H.B. [2288](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 318 (H.B. [2288](#)), Sec. 2, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 554 (S.B. [1414](#)), Sec. 1, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 554 (S.B. [1414](#)), Sec. 2, eff. January 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. [1951](#)), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. [1951](#)), Sec. 17, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. [1951](#)), Sec. 18, eff. January 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 787 (S.B. [1166](#)), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1103 (H.B. [4833](#)), Sec. 16(c), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 425 (S.B. [479](#)), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 644 (H.B. [717](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 872 (H.B. [696](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1059 (H.B. [3153](#)), Sec. 1.07, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1317 (S.B. [268](#)), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. [1139](#)), Sec. 2.02(e), eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. [1139](#)), Sec. 2.08(a), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. [891](#)), Sec. 6.05, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. [891](#)), Sec. 6.06, eff. January 1, 2021.

Sec. 46.003. COMPENSATION OF STATE PROSECUTORS. (a) The state prosecuting attorney and each state prosecutor is entitled to receive from the state a salary in an amount equal to the state annual salary as set by the General Appropriations Act in accordance with Section [659.012](#) paid to a district judge with

comparable years of service as the state prosecuting attorney or state prosecutor.

(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.

(c) Notwithstanding Subsection (a), if the amount of a state prosecutor's total annual salary from state and county sources exceeds the amount of the maximum combined base salary from all state and county sources provided by Section 659.012 for a district judge with comparable years of service as the state prosecutor, the comptroller shall reduce the state prosecutor's state annual salary by the amount equal to the excess amount, except that the comptroller may not reduce the state prosecutor's state annual salary to an amount that is less than the state base salary paid to a district judge as set by the General Appropriations Act in accordance with Section 659.012(a).

(d) The comptroller shall calculate the amount of the state annual salary to be paid to a state prosecutor under this section for a state fiscal year based on sworn statements the state prosecutor files annually with the comptroller at the time and in the manner the comptroller requires that specify the amount of county compensation to be paid to the state prosecutor for that year.

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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. 497), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1121 (H.B. 2384), Sec. 10, eff. September 1, 2019.

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. For purposes of calculating that amount, the comptroller shall use the benchmark salary applicable to the county prosecutor on September 1 of the state fiscal year in which the payment is made.

(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.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1121 (H.B. [2384](#)), Sec. 11, eff. September 1, 2019.

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

(b) The state prosecuting attorney and 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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. [497](#)), Sec. 5, eff. September 1, 2007.

Sec. 46.005. LIMITATIONS ON LAW PRACTICE. (a) The state prosecuting attorney or 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 attorney or prosecutor serves and that are pending in court before the attorney or prosecutor takes office.

(b) The state prosecuting attorney or a state prosecutor may not accept a fee from an attorney to whom the state prosecuting attorney or state 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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 150 (S.B. 497), Sec. 6, eff. September 1, 2007.

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.