

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE C. PROSECUTING ATTORNEYS

CHAPTER 41. GENERAL PROVISIONS

SUBCHAPTER A. OFFICE OF PROSECUTING ATTORNEY

Sec. 41.001. QUALIFICATIONS. A district or county attorney must be a licensed attorney.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.002. NOTIFICATION OF ADDRESS. Each district and county attorney shall notify the attorney general and comptroller of his post office address as soon as practicable after his election and qualification.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.003. ADMISSION BY PROSECUTOR. An admission made by a district or county attorney in a suit or action to which the state is a party does not prejudice the rights of the state.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.004. ACCEPTANCE OF REWARD. (a) A district or county attorney, either before or after the case is tried and finally determined, may not take from any person a fee, article of value, compensation, reward, or gift, or a promise of any of these, to prosecute a case that he is required by law to prosecute or as consideration or a testimonial for his services in a case that he is

required by law to prosecute.

(b) Section 41.004(a) does not apply to funds provided by the government of the United States through the Texas Department of Human Services to local prosecutorial offices for the purpose of assisting to defray the costs of prosecutions.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 1066, Sec. 1, eff. June 18, 1999.

Sec. 41.005. COLLECTION OF MONEY. (a) Not later than the 30th day after the date on which a district or county attorney receives any money collected for the state or a county, the district or county attorney shall, after deducting the commissions provided by this section, pay the money into the treasury of the state or of the county to which it belongs.

(b) The district or county attorney may retain a commission from money collected for the state or a county. The amount of the commission in any one case is 10 percent of the first \$1,000 collected, and five percent of the amount collected over \$1,000.

(c) Subsections (a) and (b) of this section also apply to money realized for the state under the laws governing escheat.

(d) Not later than the last day of August of each year, each district and county attorney shall file in the office of the comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year and payable into the state or county treasury.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.006. REPORT TO ATTORNEY GENERAL. At the times and in the form that the attorney general directs, the district and county attorneys shall report to the attorney general the information from their districts and counties that the attorney general desires relating to criminal matters and the interests of the state.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.007. OPINIONS TO COUNTY AND PRECINCT OFFICIALS. A district or county attorney, on request, shall give to a county or precinct official of his district or county a written opinion or written advice relating to the official duties of that official.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.008. RECORD. (a) Each district or county attorney shall keep a record of all actions or demands prosecuted or defended by the person as district or county attorney, and all proceedings held in relation to the attorney's official acts.

(b) The record required by Subsection (a) may be in a paper format, an electronic format, or both. A computer record of actions, demands, and proceedings satisfies the requirements of Subsection (a).

(c) The record shall be available at all times for inspection by any person appointed to examine it by the governor or by the commissioners court of a county.

(d) Each district and county attorney shall deliver any portion of the record under the attorney's control to the attorney's successor in office.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 301, Sec. 1, eff. Sept. 1, 2003.

Sec. 41.009. PROSECUTION OF OFFICERS ENTRUSTED WITH PUBLIC FUNDS. If a district or county attorney learns that an officer in his district or county who is entrusted with the collection or safekeeping of public funds is neglecting or abusing the trust confided in him or is failing to discharge his duties under the law, the district or county attorney shall institute the proceedings that are necessary to compel the performance of the officer's duties and to preserve and protect the public interest.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.010. APPOINTMENT OF INITIAL DISTRICT OR CRIMINAL DISTRICT ATTORNEY. If a new office of district attorney or criminal district attorney is created, the governor shall appoint a person to fill the office until the next general election.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.011. PRIVATE PRACTICE IN COUNTY OR DISTRICT OFFICE. A district or county attorney who is not prohibited by law from engaging in the private practice of law may, at the discretion of the commissioners court of a particular county, conduct a private practice of law using the district or county office provided by that county for conducting his official duties.

Added by Acts 1987, 70th Leg., ch. 213, Sec. 1, eff. Aug. 31, 1987.

Sec. 41.012. LIABILITY INSURANCE. A county or district attorney may purchase, for himself and for his staff members, liability insurance, or similar coverage from a governmental pool operating under Chapter 119, Local Government Code, or a self-insurance fund or risk retention group operating under Chapter 2259, to insure against claims arising from the performance of his official duties from state or county funds appropriated or allocated for the expenses of his office or from accounts maintained by the county or district attorney, including but not limited to the fund created by charges assessed by the county or district attorney in connection with the collection of "insufficient fund" negotiable instruments.

Added by Acts 1987, 70th Leg., ch. 296, Sec. 1, eff. Aug. 31, 1987.

Renumbered from Sec. 41.011 by Acts 1989, 71st Leg., ch. 2, Sec.

16.01(21), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch.

561, Sec. 1, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 8.229, eff. Sept. 1, 2001.

Sec. 41.013. COMPENSATION OF CERTAIN PROSECUTORS. Except as otherwise provided by law, a district attorney or criminal district attorney is entitled to receive from the state annual compensation equal to at least 80 percent of the annual compensation provided for a district judge in the General Appropriations Act.

Added by Acts 1989, 71st Leg., ch. 1254, Sec. 1, eff. Sept. 1, 1989.

Sec. 41.014. PRO BONO LEGAL SERVICES. (a) In this section:

(1) "Pro bono legal services to the indigent" includes civil legal services rendered without expectation of compensation either directly to the indigent or to a charitable public interest organization regarding matters primarily addressing the needs of the indigent.

(2) "Prosecutor" means a county attorney, district attorney, criminal district attorney, assistant county attorney, assistant district attorney, or assistant criminal district attorney.

(b) A prosecutor may provide pro bono legal services to the indigent if providing the services does not interfere with the prosecutor's official duties or regularly compensated hours of employment.

(c) Providing pro bono legal services to the indigent as authorized by this section is not within the scope of employment of the prosecutor, and the state or a political subdivision of the state is not liable for damages that result from providing the services.

(d) Providing pro bono legal services to the indigent under this section does not constitute the private practice of law.

Added by Acts 1993, 73rd Leg., ch. 540, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. STAFF OF PROSECUTING ATTORNEY

Sec. 41.101. DEFINITION. In this subchapter, "prosecuting attorney" means a county attorney, district attorney, or criminal

district attorney.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.102. EMPLOYMENT OF ASSISTANTS AND PERSONNEL. (a) A prosecuting attorney may employ the assistant prosecuting attorneys, investigators, secretaries, and other office personnel that in his judgment are required for the proper and efficient operation and administration of the office.

(b) A prosecuting attorney may request the assistance of the attorney general, and the attorney general may offer to the prosecuting attorney the assistance of his office, in the prosecution of all manner of criminal cases or in performing any duty imposed by law on the prosecuting attorney. In requesting or accepting such assistance, a prosecuting attorney may appoint any assistant attorney general as an assistant prosecuting attorney.

(c) The attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the Texas Youth Commission.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 785, Sec. 3, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 13, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1158](#), Sec. 1, eff. June 15, 2007.

Sec. 41.103. ASSISTANT PROSECUTING ATTORNEYS. (a) An assistant prosecuting attorney must be licensed to practice law in this state and shall take the constitutional oath of office.

(b) An assistant prosecuting attorney may perform all duties imposed by law on the prosecuting attorney.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.104. BOND. A prosecuting attorney may require his assistant prosecuting attorneys, investigators, and secretaries to have a bond in the amount that the prosecuting attorney sets.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.105. REMOVAL. All personnel of a prosecuting attorney's office are subject to removal at the will of the prosecuting attorney.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.106. COMPENSATION. (a) A prosecuting attorney shall fix the salaries of his assistant prosecuting attorneys, investigators, secretaries, and other office personnel, subject to the approval of the commissioners court of the county or counties composing the district.

(b) In addition to their salaries, assistant prosecuting attorneys and investigators may be allowed actual and necessary travel expenses incurred in the discharge of their duties, not to exceed the amount fixed by the prosecuting attorney and approved by the commissioners court of the county or counties composing the district. The county may pay claims for travel expenses from the general fund, the officers' salary fund, or any other available funds of the county.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.107. EQUIPMENT AND SUPPLIES. (a) The commissioners court of the county or counties composing a district may furnish telephone service, typewriters, office furniture, office space, supplies, and the other items and equipment that are necessary to carry out the official duties of the prosecuting attorney's office and may pay the expenses incident to the operation of the office.

(b) The commissioners court of the county or counties composing

a district may furnish automobiles for the use of the prosecuting attorney's office in conducting the official duties of the office and may provide for the maintenance of the automobiles.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.108. GIFTS AND GRANTS. The commissioners court of the county or counties composing a district may accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs in the county or district.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.109. AUTHORITY OF INVESTIGATOR. (a) An investigator appointed by a prosecuting attorney has the same authority as the sheriff of the county to make arrests anywhere in the county and to serve anywhere in the state warrants, capiases, subpoenas in criminal cases, and all other processes in civil or criminal cases issued by a district court, county court, or justice court of this state.

(b) An investigator is under the exclusive authority and direction of the prosecuting attorney and is not under the authority and direction of the sheriff. The prosecuting attorney is responsible for the official acts of his investigators and has the same remedies against his investigators and their sureties as any person has against a prosecuting attorney and his sureties.

(c) An investigator may not draw a fee of any character for performing a duty prescribed by this section.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [419](#), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. [925](#), Sec. 1, eff. June 15, 2007.

Sec. 41.110. TRAINING RELATED TO FAMILY VIOLENCE. The court of

criminal appeals shall adopt rules regarding the training of prosecuting attorneys relating to cases involving a charge that a person committed an act of family violence as defined by Section 71.004, Family Code.

Added by Acts 1995, 74th Leg., ch. 67, Sec. 4, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 9.001(c), eff. Sept. 1, 2003.

SUBCHAPTER C. APPORTIONMENT OF STATE FUNDS FOR PROSECUTION IN CERTAIN
COUNTIES

Sec. 41.201. ELIGIBLE COUNTIES. This subchapter applies only to:

(1) Harris County; and

(2) any other county in which:

(A) the county officials are compensated on a salary basis; and

(B) there is a criminal district attorney or a county attorney performing the duties of a district attorney.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.202. TRANSFER BY COMPTROLLER. (a) On the first day of September, January, and May of each fiscal year, the comptroller shall deposit the amount provided by this subchapter in the officers' salary fund of each county to which this subchapter applies from the available appropriations made by the legislature for that purpose.

(b) A county in which the commissioners court is entitled to determine whether county officers are paid on a salary basis may not receive funds under this subchapter until the commissioners court notifies the comptroller of its order providing that the county officers in the county are to be compensated on a salary basis.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.203. AMOUNT OF TRANSFER. (a) In making the deposits provided by Section 41.202, the comptroller shall apportion the amount appropriated for that purpose among the eligible counties on the basis of the population of each county as provided by this section.

(b) The annual apportionment for a county may not exceed:

(1) 10 cents per capita for a county with a population of less than 8,500;

(2) 7-1/2 cents per capita for a county with a population of 8,500 or more and not more than 19,000;

(3) 5 cents per capita for a county with a population of more than 19,000 and not more than 75,000;

(4) 4 cents per capita for a county with a population of more than 75,000; and

(5) 4 cents per capita for Harris County.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

Sec. 41.204. APPORTIONMENT BY COMMISSIONERS COURT. The commissioners court of a county receiving money from the state under this subchapter shall apportion the money to the proper officers' salary fund of the county.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER D. LONGEVITY PAY FOR ASSISTANT PROSECUTORS

Sec. 41.251. DEFINITIONS. In this subchapter:

(1) "Assistant prosecutor" means an assistant district attorney, an assistant criminal district attorney, or an assistant county attorney.

(2) "Full-time employee" means an assistant prosecutor who is normally scheduled to work at least 40 hours a week as an assistant prosecutor.

(3) "Part-time employee" means an assistant prosecutor who

is not a full-time employee.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [36](#), Sec. 1, eff. September 1, 2007.

Sec. 41.252. LONGEVITY PAY. (a) An assistant prosecutor is entitled to longevity pay if the assistant prosecutor:

(1) is a full-time employee on the last day of a state fiscal quarter;

(2) is not on leave without pay on the last day of a state fiscal quarter; and

(3) has accrued at least four years of lifetime service credit not later than the last day of the month preceding the last month of a state fiscal quarter.

(b) The district attorney, criminal district attorney, or county attorney in the county in which the assistant prosecutor is employed shall certify the eligibility of the assistant prosecutor to receive a longevity pay supplement under this subchapter.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Amended by Acts 2003, 78th Leg., ch. 1083, Sec. 1, eff. Dec. 1, 2003.

Sec. 41.253. AMOUNT. (a) Except as provided by Section 41.255 (f), the amount of longevity pay is \$20 per month for each year of lifetime service credit.

(b) The increase is effective beginning with the month following the month in which the fourth year of lifetime service credit is accrued.

(c) An assistant prosecutor may not receive as longevity pay from the county under this subchapter:

(1) more than \$20 for each year of lifetime service credit, regardless of the number of positions the assistant prosecutor holds or the number of hours the assistant prosecutor works each week; or

(2) more than \$5,000 annually.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Amended by Acts 2003, 78th Leg., ch. 1083, Sec. 2, eff. Dec. 1, 2003.

Sec. 41.254. LIMITATIONS ON LAW PRACTICE. (a) An assistant prosecutor who receives longevity pay under this subchapter may not engage in the private practice of law if, from all funds received, the assistant prosecutor receives a salary that is equal to or more than 80 percent of the salary paid by the state to a district judge.

(b) An assistant prosecutor who becomes subject to this section may complete all civil cases that are not in conflict with the interest of any of the counties of the district in which the assistant prosecutor serves and that are pending in court before the assistant prosecutor exceeds the salary cap.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Sec. 41.255. FUNDING. (a) The county shall pay a longevity pay supplement under this subchapter to the extent the county receives funds from the comptroller as provided by Subsection (d).

(b) The county may not reduce the salary of the assistant prosecutor to offset the longevity pay supplement.

(c) If an assistant prosecutor performs services for more than one county, the counties shall apportion the longevity pay supplement according to the ratio a county's population bears to the total population of the counties in which the assistant prosecutor performs services.

(d) Not later than the 15th day after the start of each state fiscal quarter, the county shall certify to the comptroller the total amount of longevity pay supplement due to all assistant prosecutors in the county for the preceding state fiscal quarter. The comptroller shall issue a warrant to the county for the amount certified. The comptroller shall issue warrants to the counties not later than the 60th day after the first date of each state fiscal quarter.

(e) On the receipt of funds from the comptroller as provided by

Subsection (d), the county shall pay longevity supplements to eligible assistant prosecutors in the next regularly scheduled salary payment or in a separate payment.

(f) A county is not required to pay longevity supplements if the county does not receive funds from the comptroller as provided by Subsection (d). If sufficient funds are not available to meet the requests made by counties for funds for payment of assistant prosecutors qualified for longevity supplements, the comptroller shall apportion the available funds to the eligible counties by reducing the amount payable to each county on an equal percentage basis. A county that receives from the comptroller an amount less than the amount certified by the county to the comptroller under Subsection (d) shall apportion the funds received by reducing the amount payable to eligible assistant prosecutors on an equal percentage basis, but is not required to use county funds to make up any difference between the amount certified and the amount received.

(g) If previous payments under this chapter have been reduced for insufficient funds pursuant to Subsection (f), or if a county submits the required information but not in a timely manner as required by Subsection (d), the comptroller shall:

- (1) make a payment of the balance when the funds are available; or
- (2) carry forward the balance owed to the county and pay that amount to the county when the next payment is required.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Amended by Acts 2003, 78th Leg., ch. 1083, Sec. 3, eff. Dec. 1, 2003.

Sec. 41.256. CHANGE IN STATUS. If an assistant prosecutor ceases being a full-time employee after the first workday of a month but otherwise qualifies for longevity pay, the assistant prosecutor's compensation for that month includes full longevity pay.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Sec. 41.257. ACCRUAL OF LIFETIME SERVICE CREDIT. (a) An

assistant prosecutor accrues lifetime service credit for the period in which the assistant prosecutor serves as a full-time, part-time, or temporary assistant prosecutor.

(b) An assistant prosecutor who is on leave without pay for an entire calendar month does not accrue lifetime service credit for the month.

(c) An assistant prosecutor who simultaneously holds two or more positions that each accrue lifetime service credit accrues credit for only one of the positions.

(d) An assistant prosecutor who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first day of the month.

Added by Acts 2001, 77th Leg., ch. 378, Sec. 1, eff. Jan. 1, 2002.

Sec. 41.258. ASSISTANT PROSECUTOR SUPPLEMENT FUND AND FAIR DEFENSE ACCOUNT. (a) The assistant prosecutor supplement fund is created in the state treasury.

(b) A court, judge, magistrate, peace officer, or other officer taking a bail bond for an offense other than a misdemeanor punishable by fine only under Chapter 17, Code of Criminal Procedure, shall require the payment of a \$15 cost by each surety posting the bail bond, provided the cost does not exceed \$30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal or cash bond.

(c) An officer collecting a cost under this section shall deposit the cost in the county treasury in accordance with Article 103.004, Code of Criminal Procedure.

(d) An officer who collects a cost due under this section shall:

- (1) keep separate records of the funds collected; and
- (2) file the reports required by Article 103.005, Code of Criminal Procedure.

(e) The custodian of the county treasury shall:

- (1) keep records of the amount of funds on deposit that are collected under this section; and
- (2) send to the comptroller not later than the last day of

the month following each calendar quarter the funds collected under this section during the preceding quarter.

(f) A surety paying a cost under Subsection (b) may apply for and is entitled to a refund of the cost not later than the 181st day after the date the state declines to prosecute an individual or the grand jury declines to indict an individual.

(g) A county may retain 10 percent of the funds collected under this section and may also retain all interest accrued on the funds if the custodian of the treasury:

(1) keeps records of the amount of funds on deposit; and

(2) remits the funds to the comptroller as prescribed by Subsection (e).

(h) Funds collected are subject to audit by the comptroller, and funds expended are subject to audit by the state auditor.

(i) The comptroller shall deposit two-thirds of the funds received under this section in the assistant prosecutor supplement fund and one-third of the funds received under this section to the fair defense account. A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided under this subsection.

(j) The comptroller shall pay supplements from the assistant prosecutor supplement fund as provided by this subchapter. At the end of each fiscal year, any unexpended balance in the fund in excess of \$1.5 million may be transferred to the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 1083, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [36](#), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. [36](#), Sec. 3, eff. September 1, 2007.

SUBCHAPTER E. SPECIAL PROSECUTION UNIT

Sec. 41.301. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Commission" means the Texas Youth Commission.

(3) "Department" means the Texas Department of Criminal Justice.

(4) "Executive board" means the executive board governing the board of directors of the unit.

(5) "Prosecuting attorney" means a district attorney, a criminal district attorney, or a county attorney representing the state in criminal matters before the district or inferior courts of the county.

(6) "Unit" means the special prosecution unit.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.302. GENERAL FUNCTION OF SPECIAL PROSECUTION UNIT. The special prosecution unit is an independent unit that cooperates with and supports prosecuting attorneys in prosecuting offenses and delinquent conduct described by Article 104.003(a), Code of Criminal Procedure.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.303. BOARD OF DIRECTORS. (a) The unit is governed by a board of directors composed of each prosecuting attorney who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the department or the commission are located.

(b) A prosecuting attorney described by Subsection (a) shall serve on the board of directors in addition to the other duties of the prosecuting attorney assigned by law.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.304. EXECUTIVE BOARD. (a) The board of directors is governed by an executive board composed of 11 members elected by the membership of the board of directors on a majority vote from among that membership, as follows:

(1) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an even-numbered year;

(2) an additional four members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in even-numbered years;

(3) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an odd-numbered year; and

(4) an additional five members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in odd-numbered years.

(b) If a vacancy on the executive board occurs, the board of directors shall elect a person to serve the remainder of the vacating member's term in the manner provided by Subsection (a). To be eligible for election under this subsection, a person must meet any qualifications required of the vacating member for service on the executive board.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.305. OFFICERS. (a) The members of the board of directors, on a majority vote, shall elect from among the membership of the executive board a presiding officer and an assistant presiding officer. The presiding officer serves as the presiding officer of the board of directors and the executive board, and the assistant

presiding officer serves as the assistant presiding officer of the board of directors and the executive board.

(b) The presiding officer and the assistant presiding officer serve terms of one year.

(c) The assistant presiding officer serves as presiding officer of the board of directors and the executive board in the presiding officer's absence or if a vacancy occurs in that office until a new presiding officer is elected as provided by Subsection (d).

(d) If a vacancy occurs in the office of presiding officer or assistant presiding officer, the board of directors shall elect a person to serve the remainder of the vacating officer's term in the manner provided by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.306. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE BOARD NOT A CIVIL OFFICE OF EMOLUMENT. A position on the board of directors or the executive board may not be construed to be a civil office of emolument for any purpose, including those purposes described in Section 40, Article XVI, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.307. REIMBURSEMENT FOR EXPENSES. A member of the board of directors or executive board is not entitled to compensation for service on the board of directors or executive board, if applicable, but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a member of the board of directors and the executive board, if applicable, as provided by the General Appropriations Act.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.308. CHIEF OF SPECIAL PROSECUTION UNIT; ADDITIONAL EMPLOYEES. The board of directors, on a majority vote, shall employ a person to serve as chief of the unit and additional persons to accomplish the unit's purposes. The board of directors may determine the compensation of the unit's employees.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.309. ELECTION OF COUNSELLOR. (a) The executive board, on a majority vote, shall elect a counsellor.

(b) To be eligible to serve as a counsellor, a person must:

(1) be certified in criminal law by the Texas Board of Legal Specialization;

(2) have at least five years of experience as a lawyer assisting prosecuting attorneys in prosecuting offenses or delinquent conduct committed on state property used for the custody of persons charged with or convicted of offenses or used for the custody of children charged with or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) have served for at least five years as a prosecuting attorney or as a judge of a district court, a court of appeals, or the court of criminal appeals.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.

Sec. 41.310. DUTIES OF COUNSELLOR. (a) The counsellor elected in accordance with Section 41.309:

(1) shall coordinate prosecution issues in and monitor each case involving an offense or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure, that concerns the commission;

(2) shall work with criminal justice analysts employed by the Legislative Budget Board and other persons who monitor cases

involving offenses or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure; and

(3) may conduct an investigation of any alleged illegal or improper conduct by commission officers, employees, or contractors that the counsellor reasonably believes:

(A) jeopardizes the health, safety, and welfare of children in the custody of the commission; and

(B) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure.

(b) In addition to the duties prescribed by Subsection (a), the counsellor shall on a quarterly basis provide the board of directors and the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report concerning offenses or delinquent conduct prosecuted by the unit on receiving a request for assistance under Section 61.098, Human Resources Code, or a request for assistance otherwise from a prosecuting attorney. A report under this subsection is public information under Chapter 552, Government Code, and the board of directors shall request that the commission publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the number of requests for assistance received under Section 61.098, Human Resources Code, and requests for assistance otherwise received from prosecuting attorneys;

(2) the number of cases investigated and the number of cases prosecuted;

(3) the types and outcomes of cases prosecuted, such as whether the case concerned narcotics or an alleged incident of sexual abuse; and

(4) the relationship of a victim to a perpetrator, if applicable.

(c) The counsellor, in consultation with the board of directors, shall notify the foreman of the appropriate grand jury, in the manner provided by Article 20.09, Code of Criminal Procedure, if:

(1) the counsellor receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the counsellor reasonably believes jeopardizes the health,

safety, and welfare of children in the custody of the commission;

(2) the counsellor reasonably believes the conduct:

(A) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse; and

(3) the counsellor has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Added by Acts 2007, 80th Leg., R.S., Ch. [263](#), Sec. 14, eff. June 8, 2007.