



## Prosecutor Accountability

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Elected county attorneys (CAs) and district attorneys (DAs) are perhaps the most highly-regulated legal professionals in Texas. Existing measures for holding prosecutors accountable for alleged misconduct include removal from office, State Bar discipline, criminal investigation and prosecution, courts of inquiry, civil liability, and the ballot box. Here's what that looks like in practice.

### **REMOVAL FROM OFFICE**

In some states, prosecutors may be removed by a governor, legislative impeachment, recall elections, or other means. But under the Texas Constitution ([Article 5, Section 24](#)), county-level elected officials (like prosecutors) may be removed from office only by a district court judge after a jury trial. The enabling legislation for that provision is [Local Government Code Ch. 87](#), which allows removal from office for incompetency, official misconduct, or intoxication based upon a petition that may be filed by any resident of that county. Petitions to remove elected prosecutors from office have been filed for the following reasons over the past few decades:

- the current Nueces County DA is currently contesting his potential removal triggered by a 100+-page petition filed by a resident in his county last month;
- a recent El Paso County DA resigned in lieu of removal in the face of allegations that she was not competent to carry out the duties of her office;
- the current Midland County DA was found not to have committed misconduct after a recent removal proceeding relating to her prosecution of a case;
- a former Dallas County Criminal DA resigned in lieu of removal based on allegations of incompetency related to a mental health condition for which she subsequently received inpatient treatment;
- a former Travis County DA remained in office after a removal proceeding for intoxication;
- a former Harris County DA resigned in the face of removal proceedings related to alleged substance abuse and human resources violations; and
- a former Fort Bend County DA was removed from office for misusing grand jury information.

Many bills filed in the 88th Regular Session to create new removal proceedings for prosecutors do not acknowledge this existing law and even conflict with it without repealing or amending it.

### **STATE BAR DISCIPLINE**

As lawyers, elected prosecutors are subject to discipline by the State Bar of Texas for violating applicable ethics rules. Furthermore, prosecutors are the only class of lawyers subject to a disciplinary rule specifically directed to their job ([Rule 3.09](#)). Over the past decade, elected and assistant prosecutors have been sanctioned by the State Bar with disbarment (a former Bureson County DA), resignation in lieu of disbarment (a former Williamson County DA), public reprimands (2), private reprimands (8), and probated suspensions (4).

### **CRIMINAL INVESTIGATION AND PROSECUTION**

Prosecutors, like any other public officials, are subject to local, state, or federal criminal investigation and prosecution for misconduct in office. Examples over the past 30 years include:

- a former Williamson County DA convicted of criminal contempt and jailed for failure to turn over exculpatory information to the defense;
- another former Williamson County DA convicted of criminal contempt and jailed for violating a judge's gag order;
- a former Travis County DA convicted of DWI (and later defeated at the ballot box);
- a former Wood County DA who resigned in lieu of prosecution for official misconduct;
- a former Cameron County CA convicted of bribery and extortion and sent to prison;

- a former Kleberg County CA convicted of official oppression and official misconduct;
- a former Brown County DA who resigned after being charged with aggravated perjury;
- a former Gray County DA convicted of drug and weapons charges; and
- a former Rockwall County CDA convicted of theft of government funds and sent to prison.

## **COURTS OF INQUIRY**

In addition to traditional criminal investigations, elected prosecutors (and other elected officials) are also subject to review by a court of inquiry, which is similar to a grand jury investigation but is conducted in public by a district court judge pursuant to [Code of Criminal Procedure Ch. 52](#). Prosecutors subjected to such inquiries include:

- the current Kleberg & Kenedy Counties DA (cleared of wrongdoing);
- a former Williamson County DA (who was later convicted of criminal contempt, served jail time, and gave up his law license in lieu of State Bar discipline);
- a former El Paso County DA (cleared of wrongdoing);
- a former Brazos County DA (twice—cleared of wrongdoing both times); and
- a former Guadalupe County DA (cleared of wrongdoing).

## **CIVIL LIABILITY**

While prosecutors have immunity for core prosecutorial functions, they are not always immune from federal civil rights actions (42 U.S.C. §1983), as demonstrated by these cases:

- a former Travis County DA sued for allegedly mishandling a sexual assault case (settled before trial);
- a former Shelby County DA sued for improper seizure practices (settled before trial); and
- a former Lamb County CA sued by two defendants who were later freed due to ineffective assistance of defense counsel (the prosecutor defended his actions at trial and the civil jury rendered a verdict in his favor).

## **THE BALLOT BOX**

Elected prosecutors face the same public evaluation as all other elected public servants. Some examples of prosecutors who were relieved of their responsibilities by the voters or decided to forgo an election contest following misconduct issues include:

- a McLennan County Criminal DA defeated after mishandling a biker gang shootout;
- a former Williamson County DA defeated after opposing post-conviction DNA testing in an exoneration;
- another former Williamson County DA defeated in the wake of numerous missteps;
- a former Madison County Criminal DA defeated due in part to election fraud allegations;
- a former Brown County DA defeated after opposing post-conviction DNA testing;
- a former Willacy County CA defeated after allegations of malicious prosecution;
- a former Montgomery County DA defeated after allegations of misusing office funds;
- a former Dawson County DA defeated after an arrest for DWI;
- a former Kaufman County CDA defeated after an arrest for DWI; and
- a former Shelby County DA who retired in the wake of federal lawsuits and investigations regarding highway interdiction activities.

Texas voters have never shied away from voting out elected prosecutors who fail to properly comport themselves in office. This is exactly how our democratic system of local control through direct elections is supposed to work, and it provides a reliable safeguard for the public.

## **CONCLUSION**

State and federal law provides multiple ways to hold elected prosecutors accountable for questionable conduct, and the historical record proves that. One hallmark of good policymaking is the exhaustion of existing remedies before creating new ones, and that rule of thumb may be relevant to future discussion of this topic.