

LOCAL GOVERNMENT CODE

TITLE 3. ORGANIZATION OF COUNTY GOVERNMENT

SUBTITLE B. COMMISSIONERS COURT AND COUNTY OFFICERS

CHAPTER 87. REMOVAL OF COUNTY OFFICERS FROM OFFICE; FILLING OF
VACANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. NO REMOVAL FOR PRIOR ACTION. An officer may not be removed under this chapter for an act the officer committed before election to office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. REMOVAL BY PETITION AND TRIAL

Sec. 87.011. DEFINITIONS. In this subchapter:

(1) "District attorney" includes a criminal district attorney.

(2) "Incompetency" means:

(A) gross ignorance of official duties;

(B) gross carelessness in the discharge of those duties; or

(C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer's election.

(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(A) an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law;

(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or

type of offense under state law, except a policy adopted:

(i) in compliance with state law or an injunction, judgment, or other court order;

(ii) in response to a reasonable evidentiary impediment to prosecution; or

(iii) to provide for diversion or similar conditional dismissals of cases when permissible under state law; or

(C) permitting an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to refuse to prosecute a class or type of criminal offense under state law or instruct law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law for any reason other than a reason described by Paragraph (B)(i), (ii), or (iii).

(4) "Policy" means an instruction or directive expressed in any manner.

(5) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 1, eff. September 1, 2023.

Sec. 87.012. OFFICERS SUBJECT TO REMOVAL. The district judge may, under this subchapter, remove from office:

- (1) a district attorney;
- (2) a county attorney;
- (3) a county judge;
- (4) a county commissioner;
- (5) a county clerk;
- (6) a district clerk;
- (7) a district and county clerk;
- (8) a county treasurer;
- (9) a sheriff;
- (10) a county surveyor;
- (11) a county tax assessor-collector;

(12) a constable;

(13) a justice of the peace;

(14) a member of the board of trustees of an independent school district; and

(15) a county officer, not otherwise named by this section, whose office is created under the constitution or other law of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 37 (H.B. 328), Sec. 4, eff. May 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 508 (S.B. 122), Sec. 1, eff. June 14, 2013.

Sec. 87.013. GENERAL GROUNDS FOR REMOVAL. (a) An officer may be removed for:

(1) incompetency;

(2) official misconduct; or

(3) intoxication on or off duty caused by drinking an alcoholic beverage.

(b) Intoxication is not a ground for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.0131. DEFENSE IN CERTAIN CASES. It is a defense in an action alleging a prosecuting attorney committed official misconduct described by Section 87.011(3)(C) that the prosecuting attorney took action immediately on discovering an attorney employed by or otherwise under the direction or control of the prosecuting attorney was acting as described by Section 87.011(3)(C).

Added by Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 2, eff. September 1, 2023.

Sec. 87.014. GROUNDS: FAILURE TO GIVE BOND. A county

officer who is required by law to give an official bond may be removed under this subchapter if the officer:

(1) fails to execute the bond within the time prescribed by law; or

(2) does not give a new bond, or an additional bond or security, if required by law to do so.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.015. PETITION FOR REMOVAL. (a) A proceeding for the removal of an officer is begun by filing a written petition for removal in a district court of the county in which the officer resides. However, a proceeding for the removal of a district attorney is begun by filing a written petition in a district court of:

(1) the county in which the attorney resides; or

(2) the county where the alleged cause of removal occurred, if that county is in the attorney's judicial district.

(b) A petition for removal of an officer other than a prosecuting attorney may be filed by any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county. At least one of the parties who files the petition must swear to it at or before the filing.

(b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense in that county. At least one of the parties who files the petition must swear to it at or before the filing.

(c) A petition for removal of an officer other than a prosecuting attorney must be addressed to the district judge of the court in which it is filed. A petition for removal of a prosecuting attorney must be addressed to the presiding judge of the administrative judicial region in which the petition is filed. The petition must set forth the grounds alleged for the removal of the officer in plain and intelligible language and must cite the time

and place of the occurrence of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 3, eff. September 1, 2023.

Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES.

(a) Immediately after a petition for removal of a prosecuting attorney is filed under Section 87.015, the district clerk shall deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits.

(b) On receiving a petition for removal of a prosecuting attorney under Subsection (a), the presiding judge of the administrative judicial region shall assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings.

Added by Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 4, eff. September 1, 2023.

Sec. 87.016. CITATION OF OFFICER. (a) After a petition for removal is filed, the person filing the petition shall apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer.

(b) If the application for the order is made during the term of the court, action may not be taken on the petition until the order is granted and entered in the minutes of the court. If the application is made to the judge during the vacation of the court, the judge shall indicate on the petition the action taken and shall have the action entered in the minutes of the court at the next term.

(c) If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition. The person may not take an appeal or writ of error from the judge's decision. If the judge grants the order for citation, the clerk shall issue the citation with a certified copy of the petition. The judge shall require the person filing the petition to

post security for costs in the manner provided for other cases.

(d) The citation shall order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served. The time is computed as it is in other suits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 563, Sec. 1, eff. Sept. 1, 1991.

Sec. 87.017. SUSPENSION PENDING TRIAL; TEMPORARY APPOINTEE. (a) After the issuance of the order requiring citation of the officer, the district judge may temporarily suspend the officer and may appoint another person to perform the duties of the office.

(b) The judge may not suspend the officer until the person appointed to serve executes a bond, with at least two good and sufficient sureties, in an amount fixed by the judge and conditioned as required by the judge. The bond shall be used to pay damages and costs to the suspended officer if the grounds for removal are found at trial to be insufficient or untrue. In an action to recover on the bond it is necessary to allege and prove that the temporary appointee actively aided and instigated the filing and prosecution of the removal action. The suspended officer must also serve written notice on the temporary appointee and the appointee's bondsman, within 90 days after the date the bond is executed, stating that the officer intends to hold them liable on the bond and stating the grounds for that liability.

(c) If the final judgment establishes the officer's right to the office, the county shall pay the officer from the general fund of the county an amount equal to the compensation received by the temporary appointee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.018. TRIAL. (a) Officers may be removed only following a trial by jury.

(b) The trial for removal of an officer and the proceedings connected with the trial shall be conducted as much as possible in accordance with the rules and practice of the court in other civil

cases, in the name of the State of Texas, and on the relation of the person filing the petition.

(c) In a removal case, the judge may not submit special issues to the jury. Under a proper charge applicable to the facts of the case, the judge shall instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. If the petition alleges more than one ground for removal, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained.

(d) The county attorney shall represent the state in a proceeding for the removal of an officer except as otherwise provided by Subsection (e) or (f).

(e) In a proceeding to remove a county attorney who is not a prosecuting attorney from office, the district attorney shall represent the state. If the county does not have a district attorney, the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state.

(f) In a proceeding to remove a prosecuting attorney from office, the presiding judge of the administrative judicial region in which the petition for removal was filed shall appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to represent the state.

(g) In a proceeding to remove a prosecuting attorney from office, a prosecuting attorney's public statement establishing that the prosecuting attorney adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) or permitted or intends to permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C) creates a rebuttable presumption that the prosecuting attorney committed official misconduct.

(h) In a trial in which a prosecuting attorney is accused of committing official misconduct under Section 87.011(3)(B) or (C), a court may award reasonable attorney's fees and costs the prosecuting attorney personally spent related to the conduct of the

proceeding on finding that the prosecuting attorney did not adopt or enforce a policy described by Section 87.011(3)(B) or permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C), as applicable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 563, Sec. 2, eff. Sept. 1, 1991.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 5, eff. September 1, 2023.

Sec. 87.019. APPEAL. (a) Either party to a removal action may appeal the final judgment to the court of appeals in the manner provided for other civil cases. If the officer has not been suspended from office, the officer is not required to post an appeal bond but may be required to post a bond for costs.

(b) An appeal of a removal action takes precedence over the ordinary business of the court of appeals and shall be decided with all convenient dispatch. If the trial court judgment is not set aside or suspended, the court of appeals shall issue its mandate in the case within five days after the date the court renders its judgment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REMOVAL BY CRIMINAL CONVICTION

Sec. 87.031. IMMEDIATE REMOVAL. (a) The conviction of a county officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.

(b) The court rendering judgment in such a case shall include an order removing the officer in the judgment.

(c) For purposes of Subsection (a), "a misdemeanor involving official misconduct" includes a misdemeanor under Section 39.07, Penal Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 4 (S.B. 4), Sec. 5.01, eff. September 1, 2017.

Sec. 87.032. APPEAL; SUSPENSION. If the officer appeals the judgment, other than for an offense to which Section 180.010 applies, the appeal supersedes the order of removal unless the court that renders the judgment finds that it is in the public interest to suspend the officer pending the appeal. If the court finds that the public interest requires suspension, the court shall suspend the officer as provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.001, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1048 (S.B. 232), Sec. 3, eff. September 1, 2023.

SUBCHAPTER D. FILLING OF VACANCIES

Sec. 87.041. VACANCIES FILLED BY APPOINTMENT OF COMMISSIONERS COURT.

(a) The commissioners court of a county may fill a vacancy in the office of:

- (1) county judge;
- (2) county clerk;
- (3) district and county clerk;
- (4) sheriff;
- (5) county attorney;
- (6) county treasurer;
- (7) county surveyor;
- (8) county tax assessor-collector;
- (9) justice of the peace; or
- (10) constable.

(b) The commissioners court shall fill a vacancy by a majority vote of the members of the court who are present and voting.

(c) The person appointed by the commissioners court to fill

the vacancy shall hold office until the next general election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 37 (H.B. 328), Sec. 5, eff. May 19, 2009.

Sec. 87.042. COUNTY COMMISSIONER VACANCY. (a) Except as provided by Subsection (b), if a vacancy occurs in the office of county commissioner, the county judge shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election.

(b) This subsection applies only to a county with a population of more than 300,000. Not later than the 60th day after the date a vacancy occurs in the office of county commissioner, the county judge shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election. If the county judge does not make an appointment to fill the vacancy before the 61st day after the date the vacancy occurred, the commissioners court by majority vote shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 791 (H.B. 1927), Sec. 1, eff. June 10, 2019.

Sec. 87.043. TEMPORARY ABSENCE IN OFFICE OF COUNTY JUDGE IN CERTAIN COUNTIES. (a) In a county with a population of less than 150,000, a temporary absence occurs in the office of county judge if:

(1) the county judge is located outside the county for 30 consecutive full days as a direct result of:

(A) being a reservist or a member of the national guard who was ordered to duty under the authority of federal law;

(B) enlisting in the armed forces or the national guard as a volunteer; or

(C) being inducted into the armed forces under

federal draft laws; and

(2) the commissioners court determines in writing that the absence prevents the county judge from satisfactorily discharging the duties of the office.

(b) If a temporary absence exists in the office of county judge, before the 30th day after the date the absence begins, the absent county judge may appoint a resident of the county to fill the office until the next term of that office or until the temporary absence ends, whichever event occurs first. If the absent county judge does not appoint a resident of the county within the 30-day period, the commissioners court shall appoint a resident of the county to fill the office until the next term of that office or until the temporary absence ends, whichever event occurs first.

Added by Acts 1991, 72nd Leg., ch. 447, Sec. 1, eff. June 11, 1991.