

STATEMENT

The Texas Legislature has provided the Office of the Attorney General with original jurisdiction to prosecute offenses under the Election Code – jurisdiction that the OAG shares concurrently with local prosecutors.

As is the case with any law enforcement agency, the OAG's resources are not limitless. To ensure that these limited resources available for Election Code cases are used wisely, OAG utilizes guidance and criteria that are considered in determining which referred matters receive investigative priority. The criteria that the OAG utilizes are not listed in order of importance, and all of the criteria are taken into consideration given the facts of a particular investigation. The following criteria are also considered when an investigation has proceeded to the point at which an investigative matter is presented as a case meriting potential prosecution. These criteria are guidelines only, and as every matter is unique in at least some respects, investigators and prosecutors are expected to exercise good judgment in applying these criteria to each matter.

Under OAG procedures, the factors that investigators and prosecutors consider are:

- Seriousness of offense according to statute.
- Effect of conduct on election outcome.
- Number of subjects involved in the alleged illegal activity and the scope of the activity.
- Number of voters affected by conduct.
- History of the subject as it relates to prior election-related activity.
- The subject's criminal history generally.
- Role of the subject in the overall activity.
- If the case involves "ballot harvesting," the mental and physical condition of the voter(s).
- Whether as a result of alleged illegal activity, an eligible voter was prevented from voting or having his or her vote counted.
- Evidence of knowing and intentional violations of the Election Code.
- Whether the subject was a public official, or a candidate for public office, when the alleged criminal activity occurred.

By consideration of these factors, the OAG's policy enables the agency to best utilize its resources to preserve the integrity of the elections process and to focus on instances of fraud affecting the free exercise of ballots by Texas citizens. Under these guidelines, a single complaint of alleged illegal ballot possession with no other aggravating factors would receive less consideration for investigation and, if warranted, prosecution than a case involving multiple instances of an effort to manipulate or override the free will and exercise of the ballot by voters, or a case in which the person acted with intent to defraud the voter or the election authority.

This document provides internal OAG guidance. It is not intended to create, does not create, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, whether the matter is civil or criminal. This document does not place any limitations on otherwise lawful litigative prerogatives of the OAG or any other law enforcement agency.

In carrying out OAG's legislative mandate to maintain an election environment free from fraud and deserving of public trust, the OAG is committed to continued adherence to these guidelines in allocating its law enforcement resources to Election Code matters.