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TEXAS PENAL CODE 1984



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Texas Penal Code

WITH TABLES
AND INDEX

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[OCT] 4 1984

*As Amended through the
1983 Regular and First
Called Sessions of the
68th Legislature*

WEST PUBLISHING CO.
ST. PAUL, MINNESOTA

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Texas Penal Code Fifth Edition

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PREFACE

This Pamphlet contains the text of the Penal Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Penal Code constitutes a unit of the Texas Legislative Council's statutory revision program. The Code was originally enacted by Acts 1973, 63rd Leg., ch. 399.

Table 1, Disposition, and Table 2, Derivation, are furnished, thus providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of the Code sections.

Pursuant to section 5 of Chapter 399, the Texas Legislative Council has compiled a table showing the disposition of unrepealed articles of the Penal Code of 1925, which is also included herein as Table 3.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features, is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

TABLE 1

Disposition

Showing where provisions of former articles of Vernon's Annotated Penal Code are covered in the new Penal Code or in other units of West's Texas Statutes and Codes.

See Table 3 for Disposition of unrepealed articles of the Penal Code of 1925, as amended.

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
1, 2	1.02	46	2.03
3	1.03(a)		2.04
4, 5	1.05(b)	47	12.02
6	1.02		12.03
7	1.05(a)		12.04
8	1.05(b)	48	12.03
9	2.01	49, 50	—
10	1.03	51	12.01(c)
11	—	52	12.03
12	8.03	53 to 60	—
13	—	61	12.43
to	—	62 to 64	12.42
18	—	65	7.01
19	1.05(b)		7.02
	1.07(a)(17)	66 to 71	7.02
20, 21	1.05(b)	72	7.01
22	1.07(a)(27)	73	6.04
23	1.07(a)(2)	74 to 76	—
24	—	77 to 79	38.05
to	—	80	7.03(2)
26	—	81	38.05
27	1.07(a)(22)	83 to 85	—
28	—	86, 87	39.01
29	1.04(a)	88	—
30	8.07	89 to 91	39.01
31	8.07	92	1.07(a)(30)
32	8.05	93 to 96	39.01
33	—	98, 99	—
34	8.01	100, 101	39.01
35	—	107f	39.01
36	8.04	108	39.01
37	9.21	109	—
38	8.05	110	39.01
39	6.01	111	—
	6.03	112 to 119	39.01
40	8.03	120	36.03
41	8.02		39.01
42 to 44	6.04	121 to 131	—
45	2.05	132 to 139	—
	—	141	—

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
142, 143	39.01	327	38.08
144	39.03		38.10
145, 146	39.01	328 to 330	38.08
147, 147c	37.11	331 to 333a	25.03
147d § 2	—	334	38.08
148	42.09	335	38.05
149	—	336, 337	—
152	42.09	338, 339	38.03
153 to 157	—	340	—
158 to 160	36.02	341	38.03
160—a to 165	36.02		38.04
166, 167	32.43	342 to 345	—
168 to 174	36.02	346	1.07(a)(25)
177 to 178a	36.02	347	1.07(a)(11)
178b	32.44	348	—
184 to 187	—	349	39.02
188 to 197	36.02	350 to 352	—
198 to 200a	—	353	39.02
201 to 205	—	353a, 353b	38.07
253	42.02	353d	38.07
254	36.03	354 to 364	37.10
	42.02	365 to 371	39.01
255	42.01	372	36.08
	42.02	373	—
256	36.03	379, 380	—
257	46.04(a)(2)	381 to 383	39.01
258	36.03	384 to 395	39.01
261	39.02	396 to 403	39.01
281	42.01	407 to 414	39.01
	42.05	415 to 418	39.01
282 to 287	—	418a	—
302	37.02	419	39.01
	37.03	420 to 422	39.01
303	37.02	423	39.01
	37.03	425	39.01
304	37.07	426, 427	39.01
305	37.01	427c	—
306	37.03	428	38.06
307	37.03	428a	36.05
	37.04	429	37.11
308	37.02	430	38.12
	37.03	438c, 438d	37.10
309	—	439	42.02
310	37.02	440, 441	36.03
311	37.01	442 to 446	38.07
312 to 314	—		38.08
315	7.02	447, 448	36.03
316	36.05	449 to 452	42.02
317 to 322	38.08	453, 454	42.04
323, 324	39.01	454a to 454g	—
325	—	455, 456	42.02
326	38.08	457	36.03
	38.10		42.02

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
458 to 463	38.06	519	43.03
	42.02		to
464	42.02		43.05
465	42.01	520	1.04
	42.02	521	43.06
466	42.02	522	43.04
466a	42.01	523	—
467 to 470	42.02	524	21.04
471	—		to
472	42.04		21.06
472a	42.02	525	43.03
	42.03		43.04
473	42.01	527	43.21
474	42.01		to
	42.03		43.23
	42.05	528, 528a	42.09
475, 475a	42.01	529, 530	42.10
476	42.07	534b	43.24
477	42.08	535	25.03
478	—		25.04
479	30.05	535a	—
480	42.01	535b	25.04
480a	42.12, repealed	535c, 535d	21.11
481	—	560	32.45
482, 482a	42.01	565	32.35
483	46.02	567	32.45
484	46.03	567b	31.06
485	42.01		32.41
	46.04	602	25.05
486	46.03	602—A	25.05
	46.04	603	1.04
487	—		C.C.P. 13.16
488	46.02	604	25.05
489	46.06	605	25.05
	46.07		C.C.P. 38.11
489a	—	606	—
489b	46.06	607 §§ (1) to (8)	—
489c	46.05	§ (9)	43.02
489d	46.08	§§ (10) to (13)	—
490 to 491	25.01	§ (14)	43.02
494	25.01		43.03
495	25.02	§ (15)	43.03
498 to 509	—	§ (16)	21.07
510 to 512	43.04		43.02
513	43.21	§§ (17), (18)	43.02
	43.22	§ (19)	43.03
	43.24	§ (20)	43.02
514	43.03	§ (21)	43.06
515	43.04	607a	43.02
516	43.05	608	—
517, 518	—	609	C.C.P. 14.03
		610 to 612	—

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
613	42.11	698c	C.C.P. 17A.02
614	—		to
614b	—		C.C.P. 17A.07
615 to 618	47.02	698d § 7	C.C.P. 17A.02
619 to 621	47.06	§ 8	C.C.P. 17A.03
	47.07	§ 9	C.C.P. 17A.04
622	—	§ 10	C.C.P. 17A.06
623	—	§ 11	C.C.P. 17A.07
624	47.02	§ 12	—
625	47.04	699	—
	47.06	701	—
	47.07	702, 703	—
626 to 629	47.04	710 to 713	32.42
630	47.04	714 to 716	—
	47.06	718	32.42
631	—	755 to 758	—
632	—	784	42.03
633	C.C.P. ch. 18	785, 786	42.03
634	R.C.S. 4667	790	—
635	—	791	9.22
636 to 638	C.C.P. 18.18	796 to 797b	—
639	47.09	799	—
640, 641	39.01	800, 801	—
642	—	802a	—
642a to 642c	47.02	802a—1	19.05
	to	802c	19.05
	47.07	803	C.C.P. 14.03
642c	47.09	813 to 817	—
643, 643a	47.02	831, 832	39.01
644	—	856	30.05
645	47.01	857	42.03
646	47.02	858	30.05
646a to 648—2	47.02	859	28.03
	to	860	—
	47.04	861	30.03
649	47.04	862	28.03
650	47.03	864	28.03
	47.04	978o	31.04
651	47.02	979 to 993	32.21
652	47.09	995, 996	32.21
652a	47.02	997	16.01
	to	998	32.21
	47.07	999	—
654, 655	47.02	1000, 1001	32.46
	to	1002	32.21
	47.04		32.47
655a, 655b	—		37.10
695, 696	—	1002a	32.21
698c	Water Code		32.47
	§§ 21.551		37.10
	to	1003	32.46
	21.564	1004	32.21

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
1005	3.01	1147	1.07(a)(11)
	to		22.02
	3.04		22.03
1006 to 1008	32.21		22.04
1009	1.04	1148	22.02
1010, 1011	32.21	1148a	22.04
1012 to 1017	32.21	1149	22.02
1026	32.21	1150	—
1030	32.42	1151	22.02
1041	39.01	1157	39.01
1042	—		39.02
1044, 1045	32.42	1158	39.01
1050, 1051	32.42		39.02
1053	32.42	1159	15.01
1056	31.04		22.01
1057	—		22.02
1094 to 1100	—	1160	15.01
1106a	32.42		19.02
1111b	28.03		22.01
1111m	—		22.02
1117	—	1160a	15.01
1118 to 1121	37.03		19.02
1123	32.21		22.03
1137e, 1137e—1	31.04	1161	46.01
1137f	28.03	1162	15.01
	28.04		21.02
1137g	31.04	1163	15.01
1137j	—		29.02
1138 to 1141	22.01	1164	15.01
1142, subd. 1	9.61		30.02
	to	1165	15.01
	9.63	1166	22.02
subd. 2	9.21	1167	22.01
subd. 3	9.22		22.02
	9.32	1168	22.02
subd. 4	9.41	1169 to 1172	20.02
	to	1173	9.03
	9.43	1174	20.02
subd. 5	9.51	1175, 1176	39.02
subd. 6	9.31	1177	20.02
	9.33		20.03
	9.43		25.03
subd. 7	9.31	1177a	20.04
1143	9.31	1178	20.03
1144, 1145	22.01	1179 to 1182	20.02
1146	22.01		43.05
	22.07	1183 to 1186	21.02
	42.01		21.03
1146a	22.01		21.09
	22.05	1187	21.01
		1188	8.07

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
1189	21.02	1257b	—
	21.03	1257c	19.04
	21.09		19.05
1190	15.01	1258	19.06
	21.02	1259 to 1260a	19.02
1197 to 1200	—		19.04
1201	19.01		22.01
1202, 1203	6.04		22.02
	19.01	1265, 1266	22.07
1204, 1205	—	1267	9.04
1206	6.04		22.07
1207	9.32	1268, 1268a	22.07
1208 to 1211	9.21	1269, 1270	—
1212	9.21	1271	32.21
	9.51	1272 to 1294	—
	9.52	1295, 1296	42.07
1213	—	1297	—
1214 to 1218	9.21	1298	31.03
	9.51		38.12
	9.52	1299	37.08
1219	9.32	1300 to 1303	—
	9.33	1304 to 1309	28.02
1220	—	1310, 1311	9.22
1221	9.32	1312	28.02
1222	9.32	1313	28.05
	9.33	1314, 1315	28.03
	9.42	1316	15.01
1223	—		28.02
1224 to 1226	9.32	1317 to 1321b	28.03
	9.33		28.04
	9.41	1322	31.03
1227	9.41	1323	28.03
	to		28.04
	9.44	1324	—
1228	6.01	1325	19.02
	to	1326	15.01
	6.04	1329	—
1229	6.01	1331	19.02
	to		28.03
	6.04	1332	19.02
	9.61		28.03
	to	1333	31.07
	9.63	1334	28.03
1230	19.07	1335	19.02
1231	19.07		42.03
1232	6.03	1336, 1337	28.03
1233	6.03	1338	28.03
1234, 1235	19.05		28.04
1236	6.04	1339	22.01
	19.05		22.02
1237 to 1243	19.05		22.05
1256, 1257	19.02	1339b	42.01
1257a	19.06	1340	—

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
1341, 1342	31.07	1389 to 1400	30.02
1343	28.03	1401	31.03
1347	22.05	1402	15.01
	28.03		30.02
	42.03	1402a	30.03
1348, 1349	31.03	1402b	16.01
1350	28.03	1403	30.04
	28.04	1404	30.04
	32.47	1404— a	15.01
1350a	28.03		30.02
	28.04	1404b	30.04
1351	28.03	1405, 1406	30.02
	30.05	1407	31.03
1352 to 1355	28.03	1407a	30.05
	28.04	1408	29.02
1358	28.03		29.03
	28.04	1409	29.02
1359	28.03		29.03
	28.04		31.03
1364 to 1366	28.03	1410	31.03
	28.04	1411	31.01
1367	31.04	1412 to 1414	31.03
1368	28.03	1415	1.07(a)(28)
	30.05		31.01
1372	28.03	1416, 1417	31.03
	28.04	1418, 1419	31.01
1373	28.03	1420 to 1423	31.03
	28.04	1424	—
	42.11	1425	31.01
1373— a	28.03	1426 to 1426c	31.03
	28.04	1427	31.03
	42.11		32.47
1374 to 1376	42.11		37.09
1377a	42.11		37.10
1377b	30.05	1428 to 1430	31.03
1377c	30.05	1436b	31.03
1379	28.03	1436c	31.03
	28.04	1436e to 1436g	31.03
	31.03	1437, 1438	31.03
1379a	28.03	1439	15.01
	28.04		31.03
1380, 1381	—	1440 to 1442c	31.03
1382	31.03	1443, 1444	31.03
1383	28.03	1445	31.03
	28.04	1458, 1459	31.03
1384	28.03	1462 to 1466	31.03
	28.04	1467, 1468	28.03
	31.03	1469	31.03
1388a	28.03		32.21
	28.04	1470	31.03
1388b—1	15.01	1534 to 1536	31.03
	28.03	1537	32.34
	28.04	1538	31.03

TABLE 1—DISPOSITION

Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section
1539 to 1541	31.03	1555b, 1555c	32.31
	39.01	1556	32.33
1542, 1543	31.03	1559	1.04
1544	31.01		31.03
1544a	31.03	1560	1.04
1544b	31.03		31.03
	39.01	1621b	42.02
1545	31.03	1622 to 1627	15.02
	31.04	1628	1.04
1546	31.03		15.02
1546a	31.03	1629	1.04
	32.32		15.02
1547	31.01	1673	30.03
1548 to 1550	31.03		31.03
1551	31.04	1723	46.02
1553a	31.04	1723a, 1724	42.06
1555	—		

TABLE 2

Derivation

Showing where provisions of the new Penal Code, and other Codes and Statutes, were formerly covered in Vernon's Annotated Penal Code.

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
1.01	New	6.01	39
1.02	1		1228
	2		1229
	6	6.02	1228
1.03	3		1229
	10	6.03	39
1.04	29		1228
	520		1229
	603		1232
	1009		1233
	1559	6.04	42
	1560		to
	1628		44
	1629		73
1.05(a)	7		1202
1.05(b)	4		1203
	5		1206
	8		1228
	19		1229
	to		1236
	21	7.01	65
1.06	New		72
1.07(a)(2)	23	7.02	65
1.07(a)(11)	347		to
	1147		71
1.07(a)(17)	19		315
1.07(a)(22)	27	7.03(1)	New
1.07(a)(25)	346	7.03(2)	80
1.07(a)(27)	22		721
1.07(a)(28)	1415		to
1.07(a)(30)	92	724	New
1.08	New	8.01	34
2.01	9	8.02	41
2.02	—	8.03	12
			40
2.03	46	8.04	36
2.04	46	8.05	32
2.05	45		38
2.06	New	8.06	New
3.01		8.07	30
to			31
3.04	1005		1188

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
9.01	New	9.52	1212
9.02	New		1214
9.03	1173		to
9.04	1267		1218
9.05	New	9.61	1142,
9.06	New		subd. 1
9.21	37		1229
	1142,	9.62	1142,
	subd. 2		subd. 1
	1208		1229
	to	9.63	1142,
	1212		subd. 1
	1214		1229
	to	12.01(a)	New
	1218	12.01(b)	New
9.22	791	12.01(c)	51
	1142,	12.02	47
	subd. 3	12.03	47
	1310		48
	1311		52
9.31	1142,	12.04	47
	subd. 6	12.21	
	1142,		to
	subd. 7	12.23	New
	1143	12.31	
9.32	1142,		to
	subds. 3, 4	12.33	New
	1207	12.41	New
	1219	12.42	62
9.33	1142,		to
	subd. 6		64
	1219	12.43	61
	1226	12.44	New
9.34	New	12.45	New
9.41	1142,	12.51	New
	subd. 4	15.01	1162
	1224		to
	to		1165
	1227		1190
9.42	1142,		1316
	subd. 4		1326
	1222		1388b—1
	1227		1402
9.43	1142,		1404—a
	subd. 4		1439
	1142,	15.02	1622
	subd. 6		to
	1227		1629
9.44	1227	15.03	
9.51	1142,		to
	subd. 5	15.05	New
	1212		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
16.01	997	21.03	1183
	1402b		to
19.01	1201		1186
	to		1189
	1203	21.04	
19.02	1160	to	
	1160a	21.06	524
	1256	21.07	607, § (16)
	1257	21.08	New
	1259	21.09	1183
	to		to
	1260a		1186
	1325		1189
	1331	21.10	New
	1332	21.11	535c
	1335		535d
19.03	New	21.12	New
19.04	1257c	22.01	1138
	1259		to
	to		1141
	1260a		1144
19.05	802a—1		to
	802c		1146a
	1234		1159
	to		1160
	1243		1167
	1257c		1259
	1260a		to
19.06	1257a		1260a
	1258		1339
19.07	1230	22.02	1147
	1231		1148
20.01	New		1149
20.02	1169		1151
	to		1159
	1172		1160
	1174		1166
	1177		1167
	1179		1168
	to		1259
	1182		to
20.03	1177		1260a
	1178		1339
20.04	1177a	22.03	1147
21.01	1187		1160a
21.02	1162	22.04	1147
	1183		1148a
	to	22.05	1146a
	1186		1339
	1189		1347
	1190		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
22.06	New	28.03	1351
22.07	1146		1352
	1265		to
	to		1355
	1268		1358
22.08	New		1359
25.01	490		1364
	to		to
	491		1366
	494		1368
25.02	495		1372
25.03	331		to
	to		1373—a
	333a		1379
	535		1379a
	1177		1383
25.04	331		1384
	to		1388a
	333a		1388b—1
	535		1467
	535b		1468
25.05	602	28.04	1137f
	602—A		1317
	604		to
	605		1321b
28.01	1305		1323
28.02	1304		1338
	to		1350
	1309		1350a
	1312		1352
	1314		to
	to		1355
	1316		1358
28.03	859		1359
	862		1364
	864		to
	1111b		1366
	1137f		1372
	1317		to
	to		1373—a
	1321b		1379
	1323		1379a
	1331		1383
	1332		1384
	1334		1388a
	1336		1388b—1
	1337	28.05	1313
	1338	28.06	New
	1343	29.01	New
	1347		
	1350		
	1350a		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
29.02	1163	31.03	1426
	1408		to
	1409		1430
29.03	1408		1436b
	1409		1436c
30.01	New		1436e
30.02	1164		to
	1389		1436g
	to		1437
	1400		to
	1402		1442c
	to		1443
	1406		to
30.03	861		1445
	1402a		1458
	1673		1459
30.04	1403		1462
	1404		to
	1404b		1466
30.05	479		1469
	856		1470
	858		1534
	1351		to
	1368		1536
	1377b		1538
	1377c		to
	1407a		1546a
31.01	1411		1548
	1415		to
	1418		1550
	1419		1559
	1424		1560
	1547		1673
31.02	New	31.04	978o
31.03	1298		1056
	1322		1137e
	1348		1137e—1
	1349		1137g
	1379		1367
	1382		1545
	1384		1551
	1401		1553a
	1407	31.05	New
	1409	31.06	567b
	1410	31.07	1333
	1412		1341
	to		1342
	1414	31.08	
	1416	to	
	1417	31.10	New
	1420	32.01	
	to	to	
	1423	32.03	New

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
32.21	979	32.48	New
	to	36.01	New
	993	36.02	158
	995		to
	996		165
	998		168
	1002		to
	1002a		174
	1004		177
	1006		to
	to		178a
	1008		188
	1010		to
	1011		197
	1012	36.03	120
	to		254
	1017		256
	1026		258
	1123		440
	1271		441
	1469		447
32.22	New		448
32.31	1555b		457
	1555c	36.04	New
32.32	1546a	36.05	316
32.33	1556		428a
32.34	1537	36.06	New
32.35	565	36.07	New
32.41	567b	36.08	372
32.42	710	36.09	New
	to	36.10	New
	713	37.01	305
	718		311
	1030	37.02	302
	1044		303
	1045		308
	1050		310
	1051	37.03	302
	1053		303
	1106a		306
32.43	166		to
	167		308
32.44	178b		1118
32.45	560		to
	567		1121
32.46	1000	37.04	307
	1001	37.05	New
	1003	37.06	New
32.47	1002	37.07	304
	1002a	37.08	1299
	1350	37.09	1427
	1427		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
37.10	354	39.01	93
	to		to
	364		96
	438c		107f
	438d		108
	1002		110
	1002a		112
	1427		to
37.11	147		120
	147c		142
	429		143
38.01	New		145
38.02	New		146
38.03	338		323
	339		324
	341		365
38.04	341		to
38.05	77		371
	to		381
	79		to
	81		403
	335		407
38.06	428		to
	458		423
	to		425
	463		to
38.07	353a		427
	353b		640
	353d		641
	442		831
	to		832
	446		1041
38.08	317		1157
	to		1158
	322		1539
	326		to
	to		1541
	330		1544b
	334	39.02	261
38.09	New		349
38.10	326		353
	327		1157
38.11	C.C.P. 22.01a		1158
38.12	430		1175
	1298		1176
38.13	New	39.03	144
39.01	86	42.01	255
	87		281
	89		465
	to		466a
	91		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
42.01	473	42.12, repealed	480a
	to	43.01	New
	475a		607, § (9)
	480		607, § (14)
	482		607, § (16)
	482a		to
	485		607, § (18)
	1146		607, § (20)
	1339b		607a
42.02	253	43.03	514
	254		to
	255		516
	439		519
	449		525
	to		607, § (14)
	452		607, § (15)
	455		607, § (19)
	to	43.04	510
	470		to
	472a		512
	1621b		514
42.03	472a		to
	474		516
	784		519
	to		522
	786		525
	857	43.05	514
	1335		to
	1347		516
42.04	453		519
	454		1179
	472		to
42.05	281		1182
	474	43.06	521
42.06	1723a		607, § (21)
	1724	43.21	513
42.07	476		527
	1295	43.22	513
	1296		527
42.08	477	43.23	527
42.09	148	43.24	513
	152		534b
	528	46.01	1161
	528a	46.02	483
42.10	529		488
	530		1723
42.11	613	46.03	484
	1373		486
	1373—a	46.04	485
	1374		486
	to		
	1377a		

TABLE 2—DERIVATION

Penal Code Section	Vernon's Ann.P.C. Article	Penal Code Section	Vernon's Ann.P.C. Article
46.04(a)(1) -----	New	47.04 -----	642a
46.04(a)(2) -----	257		to
46.04(b) -----	New		642c
46.04(c) -----	New		646a
46.05 -----	489c		to
46.06 -----	489		648—2
	489b		649
46.07 -----	489		650
46.08 -----	489d		652a
47.01 -----	645		654
47.02 -----	615	47.05 -----	655
	to		642a
	618		to
	624		642c
	642a		652a
	to	47.06 -----	654
	642c		655
	643		619
	643a		to
	646		621
	646a		625
	to		630
	648—2		642a
	651		to
	652a		642c
	654		652a
	655	47.07 -----	654
47.03 -----	642a		655
	to		619
	642c		to
	646a		621
	to		625
	648—2		642a
	650		to
	652a		642c
	654		652a
	655		654
47.04 -----	625	47.08 -----	655
	to		New
	630	47.09 -----	639
			642c
			652

TABLE 2—DERIVATION

Showing where provisions of the Civil Statutes, the Water Code and the Code of Criminal Procedure were formerly covered in Vernon's Annotated Penal Code.

Civ.St.Article	Vernon's Ann. P.C.Article	C.C.P.Article	Vernon's Ann. P.C.Article
4667	634	17A.02(a)	698c § 8 698d § 7
		17A.03	698c § 9 698d § 8
Water Code Section 21.551	Vernon's Ann. P.C.Article	17A.04	698c § 10 698d § 9
to 21.564	698c	17A.06	698c § 11 698d § 10
		17A.07	698c § 12 698d § 11
C.C.P.Article 13.16	Vernon's Ann. P.C.Article 603	Ch. 18	633
14.03	609	18.18	636 to 638
	803	38.11	605

TABLE 3

Disposition of Unrepealed Articles of the Texas Penal Code of 1925 and Vernon's Texas Penal Code

Pursuant to the authority granted by Section 5 of Chapter 399, Acts of the 63rd Legislature, the Texas Legislative Council has compiled the following table showing the new official citations of unrepealed articles of the 1925 Texas Penal Code and the new classifications of unrepealed statutes compiled as articles of Vernon's Texas Penal Code. Unless otherwise indicated, the new citations or classifications are to the Civil Statutes of Texas. Footnotes have been dropped where the Council felt explanatory comments might be helpful.

DISPOSITION TABLE

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Election Code Section	Election Code Article Number
107e	1			
108a	630c, § 1			
108b	630c, § 2	205a	303	15.03 ⁸
108c	630c, § 3	206	311	15.11
108d	630c, § 4	207	312	15.12
131a	Tax-Gen. 3.12	208	313	15.13
131c-1, § 16-a	2	209	314	15.14
§ 19	3	210	315	15.15
§ 25	4	212	316	15.16
§ 26	5	212a	—	15.16a
§ 26a	6	213	317	15.17
§ 27	5	215	321	15.21
§§ 28, 29	7	216	322	15.22
141e	Tax-Gen. 12.10A	217	323	15.23
141f	7164b	218	324	15.24
142a	5421r	219	325	15.25
146a	6252-21	220	326	15.26
147d, §§ 1, 3	6252-22	221	327	15.27
167a	5428b	222	328	15.28
183-2	6252-23	223	329	15.29
		225	330	15.30
		226	331	15.31
		227	332	15.32
		228	333	15.33
		229	334	15.34
		230	335	15.35
		231	336	15.36

Former Penal Code Article Number	New Election Code Section	Election Code Article Number
200a-1	301	15.01 ⁸
200a-3	302	15.02 ⁸

¹ This article was repealed by Acts 1951, 52nd Leg., p. 362, ch. 228, § 1.
² Repealed; see, now, V.A.T.S. Tax-Gen. arts. 7.25, 7.26.
³ Repealed; see, now, V.A.T.S. Tax-Gen. art. 7.29.
⁴ Repealed; see, now, V.A.T.S. Tax-Gen. art. 7.36.
⁵ Repealed; see, now, V.A.T.S. Tax-Gen. art. 7.37.
⁶ Expired.
⁷ Repealed; see, now, V.A.T.S. Tax-Gen. art. 7.38.
⁸ This article was probably impliedly repealed by Acts 1966, 59th Leg., 1st C.S., p. 1, ch. 1, § 4 (the voter registration law of 1966).

TABLE 3—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Election Code Section	Election Code Article Number	Former Penal Code Article Number	New Article Number
231a	—	15.36a	563	548e
231b	—	15.36b	564	548f
232	341	15.41	566	548g
233	342	15.42	568	21.02—1
234	343	15.43	569	21.02—2
235	344	15.44	570	21.02—3
236	345	15.45	570a	21.07A ⁹
237	346	15.46	570b	21.15—1
238	347	15.47	571	21.51
239	348	15.48	571a	5.12—1
240	349	15.49	572	21.15—2
241	350	15.50	573	21.15—3
242	351	15.51	574	21.15—4
243	352	15.52	575	3.56—1
244	361	15.61	576	21.15—5
245	362	15.62	577	3.87—1
246	363	15.63	578	21.21A
246a	—	15.63a	579	19.10—1
247	364	15.64	580	5.68—1
248	365	15.65	580a	14.37—1
249	366	15.66	580b	21.21B
250	367	15.67	581	10.41
259	371	15.71	582	10.42
260	372	15.72	583	10.43
			584	10.44
			585	10.45
			586	11.18—1
			588	14.56—1
			589	15.19—1
			590	15.19—2
			591	18.01—1
			592	18.03—1
			593	18.11—1
			594	18.16—1
			595	18.22—1
			596	5.41—1
			597	5.48—1
			597a	5.48—1
			598	5.48—2
			601	15.20—1
			602	10
			602—A	10
			602—B	10
			606a	695a, §§ 6, 7
			614—1	8501—1
			to	to
			614—17c	8501—17c
			656	8651
			to	to
			664	8659
			666—1	
			to	
			667—33	11

Former Penal Code Article Number	New Article Number
286a	9001
353c	6184m
380a	6252—24
383a	2558a, § 15
414a	4388a
414b	689a—21
422b	4413a—24
427b	974a, § 7
427c—1	6674s, § 19
431	1302—5.05, § B
432	5996a
to	to
438	5996g
454h	9002
454i	9003
531	4590.1
534	2338—1a
534a	2338—1b
561	548c
562	548d

⁹ This article was probably superseded and impliedly repealed by Insurance Code, art. 21.07, § 12.

¹⁰ See V.T.C.A. Penal Code, § 25.05 note.

¹¹ These articles were repealed by § 2 of Acts 1977, 65th Leg., p. 557, ch. 194, enacting the Alcoholic Beverage Code as a unit of the Texas Legislative Council's statutory revision program (see V.A.C.S. art. 5429b—1).

TABLE 3—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
696a	6674v—2	758a	4542a, § 21
696a—1	4477—9	763	4457a
698d, §§ 1 to 6		to	to
§§ 13, 14	4477—5b	772	4457j
700b	4476—9	773	4505a
701a	4442a, § 7	774	4505b
704	4445, § 10	775	4505c
705b—1	912a—26a	778	4567b
705d	4476—10	779	4567c
713a	4474a	780	4567d
719	4476—1a	781	4477b
719a	118c	781a	4477c
719b	118a, § 20	782	4477d
719c—1	118b—1	782a	4420b
719e	4476—3a	782b	4420a
725e	4476—11	782c	4447p
725f	4476—15	782d	4447q
726—2	4476—12	784a—1	6701d—4, § 1
726—3	4476—13	784a—2	§ 2
726d, §§ 1 to 6		784a—3	§ 3
§§ 8 to 15A	4476—14	787	6701d—5
727	4476—16	788	6701d—6
728	8401	792	6701d—7 12
to	to	799a	6687—12
734a	8407a	802	6701l—1
734c	8451a	802b	6701l—2
739	4498.1	802d	6701l—3
740	4504a	802e	6701l—4
741	4510a	802f	6701l—5
742	4510b	803a	6701d—8
742—a	4590c, § 17	803b	6701d—9
742—b	4590c, § 18	804	6675b—1
742—c	4590c, § 19	805	6675b—2
743	4498a, § 2	806	6675b—3
744	4501a	806a	6687—11
744—a	4590c, § 20	807a, § 14f	6675a—16a
744—b	4590c, § 21	807b	6675a—3e
745	4499.1	808	6675b—4
746	4441a	809	6675b—5
747	4548a	811	6675b—6
748	4548b	812	6675b—7
749	4546a	821	6701m—1
750	4548c	821a	6701m—2
751	4548d	826	6701d—10
751a	4551h	827	4008b
752	4548e	827a	6701d—11
752a	4548f	827a—2	6701d—12
752b	4548g	to	to
752c	4548h	827a—8	6701d—18
753	4551b—1	827aa	2372a—2
754	4548i	827b	6675a—6e
754a	4551a—1	827c	6701d—19
754b	4548j	827c—1	118b—2
754c	4551g—1	827d	911j
		827e	6701d—20 13

¹² This article was probably impliedly repealed by virtue of the express repeal of arts. 790 and 791, to which it refers.

¹³ This article was probably impliedly repealed by the Uniform Act Regulating Traffic on Highways (V.A.C.S., art. 6701d).

TABLE 3—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
827f	6701d—21	1084	2485a
827g	6701d—22	1085	2486a
833	6674o—1	1086	2489a
836	6711b	1087	2490a
837	6712a	1088	2495a
853	14	1089	2496a
854	6799a	1090	2497a
855	6799b	1091	2498a
861a	678e—1	1092	2499a
861b	678f—1	1093	2499b
863	678e—2	1101	8601
865	3954—1	to	to
to	to	1106	8606
868	3954—4	1107	8607
869	3972.1	to	to
870	3972.2	1111	8611
871		1111a—1	6032d
to		1111c	6049f
978n—2	15	1111c—1	9201
1027	5679a—1 16	1112	9004
1027a	5679a, §§ 9, 10	1112b	6049g
1028	5679d	1116	9005
1029	5679e	1117a	Ins.Code 15.21
1031	5679f	1122	9006
1032	5679g	1124	5195a
1033	5679h	1125	1275a
1034	74a	1125a	1287a, §§ 9 to 12
1035	5722a	1131	700a
1036	5727a	1137	1528h
1037	5726a	1137b	46f—2
1038	5726b	1137b—1	46f—3
1039	5726c	1137e—2	1446b
1040	5726d	1137h	6626c
1042b	5733a	1137i—1	9007
1043	5736—1 17	1137k	9008
1046	110a	1137l—10	9009
1047	5680a	1137n	9010
1048	5696a	1137o	6573b
1049	5698a	1137q	9011
1052	5693a	1137r	9012
1054	1440a	1167a	9013
1055	5707a	1176a	6252—25
1057a	1124a, § 5	1191	4512.1
1057b	5736b	to	to
1057c	5736c	1196	4512.6
1057d	5714	1333A	9206a 18
1067	5924.1	1334a	1432a
1068	5925a	1351a	6942a
1069	5927a	1369	6946a
1070	5927b	1370	6946b

¹⁴ V.A.T.S. Water Auxiliary Laws, art. 7849a.

¹⁵ These articles were repealed by § 2(a)(1) of Acts 1975, 64th Leg., p. 1804, ch. 545, enacting the Parks and Wildlife Code as a unit of the Texas Legislative Council's statutory revision program (see V.A.C.S. art. 5429b—1).

¹⁶ This article was probably impliedly repealed by Acts 1931, 42nd Leg., ch. 68 (V.A.C.S. art. 5679a). The penal provisions of Chapter 68 were originally designated as art. 1027a, V.T.P.C., but have now been incorporated in V.A.C.S. art. 5679a.

¹⁷ This article was probably impliedly repealed when art. 1042, Penal Code of Texas, 1925, to which it is an exception, was repealed by Acts 1973, 63rd Leg., ch. 399, § 3 (adopting the new Penal Code).

¹⁸ This article was probably impliedly repealed by V.T.P.C., art. 1722a, § 24(d); see, now, V.T.C.S., art. 9206, § 24(d).

TABLE 3—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
1370a	6971a	1502	1286b
1371	192—2	1503	1285a
1371a	192—3	1505	7009b 1 ¹⁹
1378a	192b, §§ 11 to 13	1505a	7014c
1384a	6143.1	1505b	7014d
1385	7361a	1512	7014e—2
1386	7362a	to	to
1387	7363.1	1515	7014e—5
1388	7363b	1518	7014f—2
1430a	9014	to	to
1432	6687—3	1521	7014f—5
to	to	1522	7014b
1435	6687—6	1523	7014f—6
1435a	6687—8	to	to
1436	6687—7	1525	7014f—8
1436—1	6687—1	1525a	7014e—1
1436—2	6687—2	1525b	7014f—1
1436—3	6687—9	1525b—1	7014f—9
1436a	9015	to	to
1436d	6687—10	1525b—3	7014f—11
1444a	6983b	1525c	7014g—1
1446	6905a	1525d	7014f—12
1447	6908f—1	to	to
1448	6908f—2	1525f	7014f—14
1449	6904a	1525g	7014g—2
1450	6908b	1533	564a
1451	6908a	1546b	9016
1452	6908c	1552	4596b
1453	6908g	1553	4596c
1454	6908d	1555a	67a, § 6
1455	6909a	1561	5145a
1456	6910a	1562	5150a
1456a	6908e	1563	5147a
1457	6907a	1564	5151b
1460	6890a	1565	5148a
1461	6890b	1566	5151c
1471	6985a	1567	5178a
1472	6978a	1568	5179a
1473	6978b	1573	5181a
1474	6978c	to	to
1475	6978d	1578b	5181h
1476	6998a	1579	5165.1
1477	6987a	to	to
1478	6990a	1581	5165.3
1479	6990b	1581a	5159a, §§ 5, 6
1480	6986a	1582	5182—1
1481	6983a	1583a	1269o
1482	6984a	1583b	CCP 1041b
1483	6984b	1583—1	1269p
1484	6997a	1583—2	1269q
1485	6890c	1583—3	1269r
1486	6898a	1594	5901b
1487	6990c	1595	5901a
1488	7005—2	1596	5904a
1499	1281a	1597	5906a
1500	1282a	1598	5907a
1501	1286a	1599	5908a

¹⁹ This article was probably impliedly repealed by Acts 1959, 56th Leg., ch. 192 (V.A.C.S. art. 7009a).

TABLE 3—DISPOSITION OF UNREPEALED ARTICLES

Former Penal Code Article Number	New Article Number	Former Penal Code Article Number	New Article Number
1600	5905a	1658a	4015e
1601	5909a	1661	4015f
1602	5910a	1661a	6145c
1603	5911a	1662	6559h—1
1604	5912a	to	to
1605	5913a	1672	6559h—11
1606	5914a	1684	6559i—1
1607	5914b	to	to
1608	5915a	1690	6559i—7
1609	5917a	1690a	911a, § 14
1610	5918a	1690b	911b, § 16
1611	5919a	1690d	²⁰
1612	5920a	1690e	911h
1613	5196a	1690f	911i
1614	5196b	1691	123a
1615	5201a	1692	126a
1616	5196c	1693	127a
to	to	1694	127b
1620	5196g	1695	119a
1621	5205a	1696	129a
1630	6057a	1697	126b
1631	6057b	1698	135.1
1631a	6020b	1699	127c
1645	178a	1700	127d
to	to	1700a—1	135a—1, § 9
1648	178d	1700a—2	118b—3
1648a	9017	1700a—3	118b, § 21
1649	6559g—1	1701	93d—1 ²¹
1650	6559g—2	to	to
1651	4005a	1708	93d—8
1652	4006a	1720a	695c—3
1653	4006b	1721	9202
1654	4013a	1721A	9203
1655	4015a	1722	9204
to	to	1722a	9206
1658	4015d	1725	9205

Submitted by

ROBERT E. FREEMAN
Revisor of Statutes
Texas Legislative Council

Austin, Texas
October, 1973

²⁰ Deleted; identical to V.A.C.S. art. 911d, § 15.
²¹ These articles were probably impliedly repealed by Acts 1929, 41st Leg., ch. 304; see, now, V.A.C.S. art. 93b, the Texas Seed Law.

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Enactment

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, enacted the new Texas Penal Code, effective January 1, 1974. Section 2 thereof made various conforming amendments in the Texas Civil Statutes and Codes and § 3 repealed articles of the Texas Penal

Code of 1925 and Vernon's Texas Penal Code, as amended.

Sections 4 to 7 of the 1973 Act provided:

"Sec. 4. Effective date. This Act takes effect on January 1, 1974.

"Sec. 5. Disposition of unrepealed articles.¹ (a) The purpose of this section is to provide for transfer of articles of the Penal Code of Texas, 1925, which are not repealed by this Act to the civil statutes or other appropriate places within the framework of Texas statute law, without reenactment and without altering the meaning or effect of the unrepealed articles, so that when this Act takes effect there will be only one Texas Penal Code without the confusion that would result if remnants of the old Penal Code were allowed to continue to exist in that form in the statute books.

"(b) In order to carry out the purpose of this section, the Texas Legislative Council shall prepare and submit to the secretary of state, for publication with the Acts of the 63rd Legislature, Regular Session, 1973, an appendix listing the unrepealed articles of the Penal Code of Texas, 1925, as amended, and prescribing for each unrepealed title, chapter, or article a new official citation. The council may include in the appendix any comments that may be helpful to users of the statute books.

"(c) In order that the five-volume Vernon's Texas Penal Code Annotated may be completely replaced, the council in the appendix authorized by Subsection (b) of this section may also recommend transfer and reclassification of statutes which were not enacted as part of the Penal Code of Texas, 1925, but were compiled as articles of Vernon's Texas Penal Code.

"(d) Nothing in this section or done under its authority alters the meaning or effect of any statute of this state.

"Sec. 6. Saving provisions. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and

that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

"Sec. 7. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

¹See Table 2 Disposition of Unrepealed Articles of the Texas Penal Code of 1925 and Vernon's Texas Penal Code, preceding this Code.

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec.

- 1.01. Short Title.
- 1.02. Objectives of Code.
- 1.03. Effect of Code.
- 1.04. Territorial Jurisdiction.
- 1.05. Construction of Code.
- 1.06. Computation of Age.
- 1.07. Definitions.
- 1.08. Preemption.

§ 1.01. Short Title

This code shall be known and may be cited as the Penal Code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.02. Objectives of Code

The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

- (1) to insure the public safety through:

- (A) the deterrent influence of the penalties hereinafter provided;

(B) the rehabilitation of those convicted of violations of this code; and

(C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;

(2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;

(3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;

(4) to safeguard conduct that is without guilt from condemnation as criminal;

(5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses; and

(6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.03. Effect of Code

(a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 of this code apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.04. Territorial Jurisdiction

(a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

(2) the conduct outside this state constitutes an attempt to commit an offense inside this state;

(3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or

(4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water (and the air space above the land and water) over which this state has power to define offenses.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.05. Construction of Code

(a) The rule that a penal statute is to be strictly construed does not apply to this code. The provisions of this code shall be construed according to the fair import of their terms, to promote justice and effect the objectives of the code.

(b) Unless a different construction is required by the context, Sections 2.01, 2.02, 2.04, 2.05, and 3.01 through 3.12 of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to the construction of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.06. Computation of Age

A person attains a specified age on the day of the anniversary of his birthdate.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 1.07. Definitions

(a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Suspect" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "actor" is used in this code, it means "suspect."

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Another" means a person other than the actor.

(5) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(6) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(7) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8) "Conduct" means an act or omission and its accompanying mental state.

(9) "Consent" means assent in fact, whether express or apparent.

(9.1) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(10) "Criminal negligence" is defined in Section 6.03 of this code (Culpable Mental States).

(11) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(13) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(14) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(15) "Government" means the state; a county, municipality, or political subdivision of the state; or any branch or agency of the state, a county, municipality, or political subdivision.

(16) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(17) "Individual" means a human being who has been born and is alive.

(18) "Intentional" is defined in Section 6.03 of this code (Culpable Mental States).

(19) "Knowing" is defined in Section 6.03 of this code (Culpable Mental States).

(20) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(21) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(22) "Oath" includes affirmation.

(23) "Omission" means failure to act.

(24) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(25) "Peace officer" means a person so designated by the Code of Criminal Procedure, 1965.

(26) "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(27) "Person" means an individual, corporation, or association.

(28) "Possession" means actual care, custody, control, or management.

(29) "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(30) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(31) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(32) "Reckless" is defined in Section 6.03 of this code (Culpable Mental States).

(33) "Rule" includes regulation.

(34) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(35) "Swear" includes affirm.

(36) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

Text of subdivision as added by Acts 1979, 66th Leg., p. 1113, ch. 530, § 1

(37) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

Text of subdivision as added by Acts 1979, 66th Leg., p. 1520, ch. 655, § 1

(37) "Participant in a court proceeding" means a judge, a prosecuting attorney or an assistant prosecuting attorney who represents the state, a grand juror, a party in a court proceeding, an attorney representing a party, a witness, or a juror.

(38) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(b) The definition of a term in this code applies to each grammatical variation of the term.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2123, ch. 848, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1113, ch. 530, § 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1520, ch. 655, § 1, eff. Sept. 1, 1979.]

Saving provisions. Section 17 of the 1975 Act provided:

"(a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

§ 1.08. Preemption

No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

CHAPTER 2. BURDEN OF PROOF

Sec.

- 2.01. Proof Beyond a Reasonable Doubt.
- 2.02. Exception.
- 2.03. Defense.
- 2.04. Affirmative Defense.
- 2.05. Presumption.
- 2.06. Repealed.

§ 2.01. Proof Beyond a Reasonable Doubt

All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.02. Exception

(a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of"

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.03. Defense

(a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution"

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a

reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.04. Affirmative Defense

(a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution"

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 2.05. Presumption

When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the

jury shall not consider the presumption for any purpose.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 2, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 2.06. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

CHAPTER 3. MULTIPLE PROSECUTIONS

- Sec. 3.01. Definition.
- 3.02. Consolidation and Joinder of Prosecutions.
- 3.03. Sentences for Offenses Arising Out of Same Criminal Episode.
- 3.04. Severance.

§ 3.01. Definition

In this chapter, "criminal episode" means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property).¹

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ Section 28.01 et seq.

§ 3.02. Consolidation and Joinder of Prosecutions

(a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 3.03. Sentences for Offenses Arising Out of Same Criminal Episode

When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 3.04. Severance

(a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 of this code, the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the provisions of Section 3.03 of this code do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Sec.

- 6.01. Requirement of Voluntary Act or Omission.
- 6.02. Requirement of Culpability.
- 6.03. Definitions of Culpable Mental States.
- 6.04. Causation: Conduct and Results.

§ 6.01. Requirement of Voluntary Act or Omission

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a statute provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 3, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 6.02. Requirement of Culpability

(a) Except as provided in Subsection (b) of this section, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b) of this section, intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- (1) intentional;
- (2) knowing;
- (3) reckless;
- (4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 6.03. Definitions of Culpable Mental States

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 6.04. Causation: Conduct and Results

(a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

- (1) a different offense was committed; or
- (2) a different person or property was injured, harmed, or otherwise affected.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec.

- 7.01. Parties to Offenses.
- 7.02. Criminal Responsibility for Conduct of Another.
- 7.03. Defenses Excluded.

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

- 7.21. Definitions.
- 7.22. Criminal Responsibility of Corporation or Association.
- 7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association.
- 7.24. Defense to Criminal Responsibility of Corporation or Association.

SUBCHAPTER A. COMPLICITY

§ 7.01. Parties to Offenses

(a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 7.02. Criminal Responsibility for Conduct of Another

(a) A person is criminally responsible for an offense committed by the conduct of another if:

- (1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;
- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 7.03. Defenses Excluded

In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

- (1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or
- (2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 7.04 to 7.20 reserved for expansion]

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

§ 7.21. Definitions

In this subchapter:

- (1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.
- (2) "High managerial agent" means:
 - (A) a partner in a partnership;
 - (B) an officer of a corporation or association;
 - (C) an agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 7.22. Criminal Responsibility of Corporation or Association

(a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

(1) in this code where corporations and associations are made subject thereto;

(2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or associations plainly appears; or

(3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or associations plainly appears.

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 4, eff. Sept. 1, 1975.]

For saving provisions see note set out under section 1.07.

§ 7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association

(a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 7.24. Defense to Criminal Responsibility of Corporation or Association

It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent

having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 341, § 5, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec.

- 8.01. Insanity.
- 8.02. Mistake of Fact.
- 8.03. Mistake of Law.
- 8.04. Intoxication.
- 8.05. Duress.
- 8.06. Entrapment.
- 8.07. Age Affecting Criminal Responsibility.

§ 8.01. Insanity

(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2640, ch. 454, § 1, eff. Aug. 29, 1983.]

§ 8.02. Mistake of Fact

(a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.03. Mistake of Law

(a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:

- (1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.04. Intoxication

(a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section "intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.05. Duress

(a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.06. Entrapment

(a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 8.07. Age Affecting Criminal Responsibility

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended,¹ except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended, except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 24, eff. Sept. 1, 1975.]

¹ Civil Statutes, art. 67011-4.

Acts 1975, 64th Leg., p. 912, ch. 342, § 16 and Acts 1975, 64th Leg., p. 2159, ch. 693, § 26 repealed Penal Code (1925), art. 30, as amended by Acts 1973, 63rd Leg., p. 1484, ch. 544, § 2.

For saving provisions, see note set out under Section 1.07.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 9.01. Definitions.
- 9.02. Justification as a Defense.
- 9.03. Confinement as Justifiable Force.
- 9.04. Threats as Justifiable Force.
- 9.05. Reckless Injury of Innocent Third Person.
- 9.06. Civil Remedies Unaffected.

SUBCHAPTER B. JUSTIFICATION GENERALLY

- 9.21. Public Duty.
- 9.22. Necessity.

SUBCHAPTER C. PROTECTION OF PERSONS

- 9.31. Self-Defense.
- 9.32. Deadly Force in Defense of Person.
- 9.33. Defense of Third Person.
- 9.34. Protection of Life or Health.

SUBCHAPTER D. PROTECTION OF PROPERTY

- 9.41. Protection of One's Own Property.
- 9.42. Deadly Force to Protect Property.
- 9.43. Protection of Third Person's Property.
- 9.44. Use of Device to Protect Property.

SUBCHAPTER E. LAW ENFORCEMENT

- 9.51. Arrest and Search.
- 9.52. Prevention of Escape from Custody.

SUBCHAPTER F. SPECIAL RELATIONSHIPS

- 9.61. Parent-Child.
- 9.62. Educator-Student.
- 9.63. Guardian-Incompetent.

SUBCHAPTER A. GENERAL PROVISIONS

§ 9.01. Definitions

In this chapter:

- (1) "Custody" means:
 - (A) under arrest by a peace officer; or
 - (B) under restraint by a public servant pursuant to an order of a court.
- (2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.
- (3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.02. Justification as a Defense

It is a defense to prosecution that the conduct in question is justified under this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.03. Confinement as Justifiable Force

Confinement is justified when force is justified by this chapter if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.04. Threats as Justifiable Force

The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.05. Reckless Injury of Innocent Third Person

Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.06. Civil Remedies Unaffected

The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.07 to 9.20 reserved for expansion]

SUBCHAPTER B. JUSTIFICATION
GENERALLY

§ 9.21. Public Duty

(a) Except as qualified by Subsections (b) and (c) of this section, conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C),¹ to protect property (Subchapter D),² for law enforcement (Subchapter E),³ or by virtue of a special relationship (Subchapter F).⁴

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

(1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ Section 9.31 et seq.

² Section 9.41 et seq.

³ Section 9.51 et seq.

⁴ Section 9.61 et seq.

§ 9.22. Necessity

Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prescribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.23 to 9.30 reserved for expansion]

SUBCHAPTER C. PROTECTION OF PERSONS

§ 9.31. Self-Defense

(a) Except as provided in Subsection (b) of this section, a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) of this section;

(3) if the actor consented to the exact force used or attempted by the other; or

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34 of this code.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.32. Deadly Force in Defense of Person

A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31 of this code;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5316, ch. 977, § 5, eff. Sept. 1, 1983.]

Section 13 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 9.33. Defense of Third Person

A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 of this code in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.34. Protection of Life or Health

(a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other's life in an emergency.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.35 to 9.40 reserved for expansion]

SUBCHAPTER D. PROTECTION OF PROPERTY

§ 9.41. Protection of One's Own Property

(a) A person in lawful possession of land or tangible, movable property is justified in using force

against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.42. Deadly Force to Protect Property

A person is justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41 of this code; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.43. Protection of Third Person's Property

A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 of this code in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.44. Use of Device to Protect Property

The justification afforded by Sections 9.41 and 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 6, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

[Sections 9.45 to 9.50 reserved for expansion]

SUBCHAPTER E. LAW ENFORCEMENT

§ 9.51. Arrest and Search

(a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are

already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) of this section and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) of this section and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d) of this section.

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d) of this section.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.52. Prevention of Escape from Custody

The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a penal institution or a peace officer is justified in using any force, including deadly force, that he believes to be immediately necessary to prevent the escape of a person from a

jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 9.53 to 9.60 reserved for expansion]

SUBCHAPTER F. SPECIAL RELATIONSHIPS

§ 9.61. Parent-Child

(a) The use of force, but not deadly force, against a child younger than 18 years is justified:

- (1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and
- (2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.62. Educator-Student

The use of force, but not deadly force, against a person is justified:

- (1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
- (2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 9.63. Guardian-Incompetent

The use of force, but not deadly force, against a mental incompetent is justified:

- (1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and
- (2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 12.01. Punishment in Accordance with Code.
- 12.02. Classification of Offenses.
- 12.03. Classification of Misdemeanors.
- 12.04. Classification of Felonies.

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

- 12.21. Class A Misdemeanor.
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SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

- 12.31. Capital Felony.
- 12.32. First-Degree Felony Punishment.
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SUBCHAPTER D. EXCEPTIONAL SENTENCES

- 12.41. Classification of Offenses Outside this Code.
- 12.42. Penalties for Repeat and Habitual Felony Offenders.
- 12.43. Penalties for Repeat and Habitual Misdemeanor Offenders.
- 12.44. Reduction of Third Degree Felony to Misdemeanor.
- 12.45. Admission of Unadjudicated Offense.
- 12.46. Use of Prior Convictions.

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

- 12.51. Authorized Punishments for Corporations and Associations.

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.01. Punishment in Accordance with Code

(a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure, 1965.

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.02. Classification of Offenses

Offenses are designated as felonies or misdemeanors.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.03. Classification of Misdemeanors

(a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

- (1) Class A misdemeanors;
- (2) Class B misdemeanors;
- (3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.04. Classification of Felonies

(a) Felonies are classified according to the relative seriousness of the offense into four categories:

- (1) capital felonies;
- (2) felonies of the first degree;
- (3) felonies of the second degree;
- (4) felonies of the third degree.

(b) An offense designated a felony in this code without specification as to category is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 2, § 3, eff. Jan. 1, 1974.]

[Sections 12.05 to 12.20 reserved for expansion]

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

§ 12.21. Class A Misdemeanor

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.22. Class B Misdemeanor

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$1,000;
- (2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.23. Class C Misdemeanor

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$200.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 12.24 to 12.30 reserved for expansion]

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

§ 12.31. Capital Felony

(a) An individual adjudged guilty of a capital felony shall be punished by confinement in the Texas Department of Corrections for life or by death.

(b) Prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. A prospective juror shall be disqualified from serving as a juror unless he states under oath that the mandatory penalty of death or imprisonment for life will not affect his deliberations on any issue of fact.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

§ 12.32. First-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974; Acts 1979, 66th Leg., p. 1058, ch. 488, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 12.33. Second-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

§ 12.34. Third-Degree Felony Punishment

(a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$5,000.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, § 2, eff. Jan. 1, 1974.]

[Sections 12.35 to 12.40 reserved for expansion]

SUBCHAPTER D. EXCEPTIONAL SENTENCES

§ 12.41. Classification of Offenses Outside this Code

For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

- (1) "felony of the third degree" if confinement in a penitentiary is affixed to the offense as a possible punishment;
- (2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;
- (3) "Class C misdemeanor" if the offense is punishable by fine only.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.42. Penalties for Repeat and Habitual Felony Offenders

(a) If it be shown on the trial of a third-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a second-degree felony.

(b) If it be shown on the trial of a second-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a first-degree felony.

(c) If it be shown on the trial of a first-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years or less than 15 years.

(d) If it be shown on the trial of any felony offense that the defendant has previously been fi-

nally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years or less than 25 years.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1750, ch. 339, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) Except as provided by Subsection (b) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) In a criminal action ending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

§ 12.43. Penalties for Repeat and Habitual Misdemeanor Offenders

(a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it be shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.44. Reduction of Third-Degree Felony to Misdemeanor

(a) A court may set aside a judgment or verdict of guilty of a felony of the third degree and enter a judgment of guilt and punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(b) When a court is authorized to enter judgment of guilt and sentence for a lesser category of offense as provided in Subsection (a) of this section, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 12.45. Admission of Unadjudicated Offense

(a) A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 4131, ch. 649, § 1, eff. Aug. 29, 1983.]

§ 12.46. Use of Prior Convictions

The use of a conviction for enhancement purposes shall not preclude the subsequent use of such conviction for enhancement purposes.

[Acts 1979, 66th Leg., p. 1027, ch. 459, § 1, eff. June 7, 1979.]

[Sections 12.47 to 12.50 reserved for expansion]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

§ 12.51. Authorized Punishments for Corporations and Associations

(a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- (1) \$20,000 if the offense is a felony of any category;
- (2) \$10,000 if the offense is a Class A or Class B misdemeanor; or
- (3) \$2,000 if the offense is a Class C misdemeanor.

(c) In lieu of the fines authorized by Subsections (a) and (b)(1) and (b)(2) of this section, if a court finds that the corporation or association gained money or property or caused personal injury, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to

pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 1917, ch. 768, § 1, eff. June 16, 1977.]

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Sec.

- 15.01. Criminal Attempt.
- 15.02. Criminal Conspiracy.
- 15.03. Criminal Solicitation.
- 15.04. Renunciation Defense.
- 15.05. No Offense.

§ 15.01. Criminal Attempt

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 4, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 15.02. Criminal Conspiracy

(a) A person commits criminal conspiracy if, with intent that a felony be committed:

- (1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
- (2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a felony of the third degree, the offense is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 15.03. Criminal Solicitation

(a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 15.04. Renunciation Defense

(a) It is an affirmative defense to prosecution under Section 15.01 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under Section 15.02 or 15.03 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 15.05. No Offense

Attempt or conspiracy to commit, or solicitation of, a preparatory offense defined in this chapter is not an offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

**CHAPTER 16. CRIMINAL INSTRUMENTS
AND INTERCEPTION OF WIRE OR
ORAL COMMUNICATION**

Sec.

16.01. Unlawful Use of Criminal Instrument.

16.02. Unlawful Interception, Use or Disclosure of Wire or Oral Communication.

The heading of this chapter was amended by Acts 1981, 67th Leg., p. 740, ch. 275, § 3, effective until September 1, 1985.

§ 16.01. Unlawful Use of Criminal Instrument

(a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) of this section is one category lower than the offense intended. An offense under Subsection (a)(2) of this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 7, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 16.02. Unlawful Interception, Use or Disclosure of Wire or Oral Communications

Text of section added effective until September 1, 1985

(a) In this section, "covert entry," "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure, 1965.

(b) Except as specifically provided by Subsection (c) of this section, a person commits an offense if he:

(1) knowingly or intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire or oral communication;

(2) knowingly or intentionally discloses or endeavors to disclose to another person the contents of a wire or oral communication if he knows or is reckless about whether the information was

obtained through the interception of a wire or oral communication in violation of this subsection;

(3) knowingly or intentionally uses or endeavors to use the contents of a wire or oral communication if he knows or is reckless about whether the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire or oral communications without court order or authorization.

(c) It is an affirmative defense to the application of Subsection (b) of this section that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire or oral communication;

(3) a person acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;

(4) a person not acting under color of law intercepts a wire or oral communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act; or

(5) a person acting under color of law intercepts a wire or oral communication if:

(A) prior consent for the interception has been given by a magistrate;

(B) an immediate life-threatening situation exists;

(C) the person is a member of a law enforcement unit specially trained to respond to and deal with life-threatening situations; and

(D) the interception ceases immediately on termination of the life-threatening situation.

(d) Except as provided by Subsection (e) of this section, a person commits an offense if he knowingly or intentionally manufactures, assembles, possesses, sells, sends, or carries an electronic, mechanical, or other device that is designed primarily for nonconsensual interception of wire or oral communications.

(e) It is an affirmative defense to the application of Subsection (d) of this section that the manufacture, assembly, possession, sale, sending, or carrying of an electronic, mechanical, or other device that is designed primarily for the purpose of nonconsensual interception of wire or oral communication is by:

(1) a communication common carrier or an officer, agent, or employee of or a person under contract with a communication common carrier acting in the normal course of the communication carrier's business;

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state; or

(3) a law enforcement agency that has an established unit specifically designated to respond to and deal with life-threatening situations.

(f) An offense under this section is a felony of the second degree.

(g) An electronic, mechanical, or other device that is used, manufactured, assembled, possessed, sold, sent, or carried in violation of this section may be seized by a peace officer pursuant to executing a lawful search or arrest.

(h) Property seized pursuant to this section may be forfeited to the Department of Public Safety in the manner provided by Article 18.18, Code of Criminal Procedure, 1965, as amended, for disposition of seized property. The department may destroy the property or maintain, repair, use, and operate the property in manner consistent with Article 18.20, Code of Criminal Procedure 1965.

(i) For purposes of this section:

(1) An immediate life-threatening situation exists when human life is directly threatened in either a hostage or barricade situation.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who has received a minimum of 40 hours a year of training in hostage and barricade suspect situations. This training must be evidenced by the submission of appropriate documentation to the Commission on

Law Enforcement Officer Standards and Education.

[Acts 1981, 67th Leg., p. 738, ch. 275, § 2, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4878, ch. 864, §§ 1 to 3, eff. June 19, 1983.]

Section 5 of the 1981 Act provides:

"This Act shall not be in force after September 1, 1985."

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Sec.

19.01. Types of Criminal Homicide.

19.02. Murder.

19.03. Capital Murder.

19.04. Voluntary Manslaughter.

19.05. Involuntary Manslaughter.

19.06. Evidence.

19.07. Criminally Negligent Homicide.

§ 19.01. Types of Criminal Homicide

(a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, capital murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.02. Murder

(a) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.03. Capital Murder

(a) A person commits an offense if he commits murder as defined under Section 19.02(a)(1) of this code and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an

official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, or arson;

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution; or

(5) the person, while incarcerated in a penal institution, murders another who is employed in the operation of the penal institution.

(b) An offense under this section is a capital felony.

(c) If the jury does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 5317, ch. 977, § 6, eff. Sept. 1, 1983.]

Section 13 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

"(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 19.04. Voluntary Manslaughter

(a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(d) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.05. Involuntary Manslaughter

(a) A person commits an offense if he:

(1) recklessly causes the death of an individual; or

(2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

Acts 1983, 68th Leg., p. 1605, ch. 303, § 24, provides:

"(a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county for an offense under Article 67011-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code.

"(b) The sheriff of the county shall determine upon approval by the county commissioners court the number of devices necessary to ensure that a peace officer arresting a defendant for an offense listed in Subsection (a) of this section may visually record the defendant's appearance within a reasonable time after the arrest.

"(c) The fact that an arresting officer or other person acting on behalf of the state failed to visually record a person arrested for an offense listed in Subsection (a) of this section is admissible at the trial of the offense if the offense occurred in a county required to purchase and maintain electronic devices under this section."

§ 19.06. Evidence

In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

§ 19.07. Criminally Negligent Homicide

(a) A person commits an offense if he causes the death of an individual by criminal negligence.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, § 1, eff. Jan. 1, 1974.]

**CHAPTER 20. KIDNAPPING AND
FALSE IMPRISONMENT**

Sec.

- 20.01. Definitions.
20.02. False Imprisonment.
20.03. Kidnapping.
20.04. Aggravated Kidnapping.

§ 20.01. Definitions

In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if he is a child less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 20.02. False Imprisonment

(a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child less than 14 years of age;

(2) the actor was a relative of the child; and

(3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class B misdemeanor unless the actor recklessly exposes the victim to a substantial risk of serious bodily injury, in which event it is a felony of the third degree.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 20.03. Kidnapping

(a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 20.04. Aggravated Kidnapping

(a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;

(4) inflict bodily injury on him or violate or abuse him sexually;

(5) terrorize him or a third person; or

(6) interfere with the performance of any governmental or political function.

(b) An offense under this section is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place, in which event it is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

CHAPTER 21. SEXUAL OFFENSES

Sec.

- 21.01. Definitions.
21.02 to 21.05. Repealed.
21.06. Homosexual Conduct.
21.07. Public Lewdness.
21.08. Indecent Exposure.
21.09, 21.10. Repealed.
21.11. Indecency with a Child.
21.12. Repealed.
21.13. Renumbered.

§ 21.01. Definitions

In this chapter:

(1) "Deviate sexual intercourse" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(B) the penetration of the genitals or the anus of another person with an object.

(2) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 373, ch. 168, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 203, ch. 96, § 3, eff. Sept. 1, 1981.]

Section 4 of the 1981 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§§ 21.02 to 21.05. Repealed by Acts 1983, 68th Leg., p. 5321, ch. 977, § 12, eff. Sept. 1, 1983

See, now, §§ 21.011 and 21.021.

Continuation of law in effect at time of offense for offenses committed prior to effective date of 1983 repealing act, see note under § 22.01.

§ 21.06. Homosexual Conduct

(a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.07. Public Lewdness

(a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his act:

- (1) an act of sexual intercourse;
- (2) an act of deviate sexual intercourse;
- (3) an act of sexual contact;
- (4) an act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 21.08. Indecent Exposure

(a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person,

and he is reckless about whether another is present who will be offended or alarmed by his act.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 509, ch. 924, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§§ 21.09, 21.10. Repealed by Acts 1983, 68th Leg., p. 5321, ch. 977, § 12, eff. Sept. 1, 1983

See, now, §§ 21.011 and 21.021.

Continuation of law in effect at time of offense for offenses committed prior to effective date of 1983 repealing act, see note under § 22.01.

§ 21.11. Indecency with a Child

(a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

- (1) engages in sexual contact with the child; or
- (2) exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) It is a defense to prosecution under this section that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in:

- (1) sexual intercourse;
- (2) deviate sexual intercourse;
- (3) sexual contact; or
- (4) indecent exposure as defined in Subsection (a)(2) of this section.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim and of the opposite sex.

(d) An offense under Subsection (a)(1) of this section is a felony of the second degree and an offense under Subsection (a)(2) of this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 472, ch. 202, § 3, eff. Sept. 1, 1981.]

Section 5 of the 1981 amendatory act provides:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date, and that law is continued in effect for this purpose as if this Act were not in force. For the purposes of this section, an offense is committed on or after the effective date of this Act if every element of the offense occurs on or after the effective date."

§ 21.12. Repealed by Acts 1983, 68th Leg., p. 5321, ch. 977, § 12, eff. Sept. 1, 1983

Continuation of law in effect at time of offense for offenses committed prior to effective date of 1983 repealing act, see note under § 22.01.

§ 21.13. Renumbered as § 22.065 by Acts 1983, 68th Leg., p. 5315, ch. 977, § 4, eff. Sept. 1, 1983

CHAPTER 22. ASSAULTIVE OFFENSES

Sec.

- 22.01. Assault.
- 22.011. Sexual Assault.
- 22.02. Aggravated Assault.
- 22.021. Aggravated Sexual Assault.
- 22.03. Deadly Assault on Law Enforcement or Corrections Officer or Court Participant.
- 22.04. Injury to a Child or an Elderly Individual.
- 22.05. Reckless Conduct.
- 22.06. Consent as Defense to Assaultive Conduct.
- 22.065. Evidence of Previous Sexual Conduct.
- 22.07. Terroristic Threat.
- 22.08. Aiding Suicide.
- 22.09. Tampering With Consumer Product.

§ 22.01. Assault

(a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; or

(2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) of this section is a Class A misdemeanor unless the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that subsection, in which event the offense is a felony of the third degree.

(c) An offense under Subsection (a)(2) of this section is a Class C misdemeanor unless:

(1) the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection,

and the offense is committed by threatening a patient or resident of an institution described in that subsection with bodily injury, in which event the offense is a Class B misdemeanor; or

(2) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor.

(d) An offense under Subsection (a)(3) of this section is a Class C misdemeanor unless the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, §§ 12, 13, eff. July 22, 1977; Acts 1979, 66th Leg., p. 260, ch. 135, §§ 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 367, ch. 164, § 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 5311, ch. 977, § 1, eff. Sept. 1, 1983.]

Section 13 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act.

"(b) An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 22.011. Sexual Assault

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or vagina of another person who is not the spouse of the actor by any means, without that person's consent;

(B) causes the penetration of the mouth of another person who is not the spouse of the actor by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person who is not the spouse of the actor, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or vagina of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor; or

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) of this section is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor knows that the other person submits or participates because of the erroneous belief that the actor is the other person's spouse;

(7) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; or

(8) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another, except that persons married to each other are not treated as spouses if they do not reside together or if there is an action pending between them for dissolution of the marriage or for separate maintenance.

(d) It is a defense to prosecution under Subsection (a)(2) of this section that:

(1) the child was at the time of the offense 14 years of age or older and had prior to the time of the offense engaged promiscuously in conduct described in that subsection; or

(2) the conduct consisted of medical care for the child.

(e) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the actor was not more than two years older than the victim.

(f) An offense under this section is a felony of the second degree.

[Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983.]

Applicability of 1983 Act to offense committed on or after effective date and law governing offense committed before effective date, see note under § 22.01.

§ 22.02. Aggravated Assault

(a) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person:

(1) causes serious bodily injury to another, including the person's spouse;

(2) causes bodily injury to a peace officer or a jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections when the person knows or has been informed the person assaulted is a peace officer, jailer, or guard:

(A) while the peace officer, jailer, or guard is lawfully discharging an official duty; or

(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or

(3) causes bodily injury to a participant in a court proceeding when the person knows or has been informed the person assaulted is a participant in a court proceeding:

(A) while the injured person is lawfully discharging an official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or

(4) uses a deadly weapon.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 367, ch. 164, § 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1521, ch. 655, § 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 349, ch. 79, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5311, ch. 977, § 2, eff. Sept. 1, 1983.]

Section 3 of Acts 1983, 68th Leg., p. 349, ch. 79, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Applicability of amendment by Acts 1983, 68th Leg., p. 351, ch. 977, § 2 to offense committed on or after effective date and law governing offense committed before effective date, see note under § 22.01.

§ 22.021. Aggravated Sexual Assault

(a) A person commits an offense if the person commits sexual assault as defined in Section 22.011 of this code and:

(1) the person causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(2) by acts or words the person places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(3) by acts or words occurring in the presence of the victim the person threatens to cause the death, serious bodily injury, or kidnapping of any person;

(4) the person uses or exhibits a deadly weapon in the course of the same criminal episode; or

(5) the victim is younger than 14 years of age.

(b) The defense provided by Section 22.011(d)(1) of this code and the affirmative defense provided by Section 22.011(e) of this code do not apply to this section. The defense provided by Section 22.011(d)(2) of this section does apply to this section.

(c) An offense under this section is a felony of the first degree.

[Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983.]

Applicability of 1983 Act to offense committed on or after effective date and law governing offense committed before effective date, see note under § 22.01.

§ 22.03. Deadly Assault on Law Enforcement or Corrections Officer or Court Participant

(a) A person commits an offense if, with a firearm or a prohibited weapon, he intentionally or knowingly causes serious bodily injury:

(1) to a peace officer or a jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections where he knows or has been informed the person assaulted is a peace officer, jailer, or guard:

(A) while the peace officer, jailer, or guard is acting in the lawful discharge of an official duty; or

(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, or guard; or

(2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding:

(A) while the injured person is in the lawful discharge of official duty; or

(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1521, ch. 655, § 3, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 350, ch. 79, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 22.04. Injury to a Child or an Elderly Individual

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that causes to a child who is 14 years of age or younger or to an individual who is 65 years of age or older:

(1) serious bodily injury;

(2) serious physical or mental deficiency or impairment;

(3) disfigurement or deformity; or

(4) bodily injury.

(b) An offense under Subsection (a)(1), (2), or (3) of this section is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a felony of the third degree.

(c) An offense under Subsection (a)(4) of this section is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a Class A misdemeanor.

(d) An offense under Subsection (a) of this section when the person acts with criminal negligence shall be a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 365, ch. 162, § 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 472, ch. 202, § 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2397, ch. 604, § 1, eff. Sept. 1, 1981.]

Acts 1981, 67th Leg., p. 472, ch. 202, § 5, provides:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date, and that law is continued in effect for this purpose as if this Act were not in force. For the purposes of this section, an offense is committed on or after the effective date of this Act if every element of the offense occurs on or after the effective date."

§ 22.05. Reckless Conduct

(a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.06. Consent as Defense to Assaultive Conduct

The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Reckless Conduct) of this code if:

- (1) the conduct did not threaten or inflict serious bodily injury; or
- (2) the victim knew the conduct was a risk of:
 - (A) his occupation;
 - (B) recognized medical treatment; or
 - (C) a scientific experiment conducted by recognized methods.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.065. Evidence of Previous Sexual Conduct

(a) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct may be admitted under Sections 22.011 and 22.021 of this code only if, and only to the extent that, the judge finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(b) If the defendant proposes to ask any question concerning specific instances, opinion evidence, or reputation evidence of the victim's sexual conduct, either by direct examination or cross-examination of any witness, the defendant must inform the court out of the hearing of the jury prior to asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under Subsection (a) of this section. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits nor refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(c) The court shall seal the record of the in camera hearing required in Subsection (b) of this section for delivery to the appellate court in the event of an appeal.

(d) This section does not limit the right of the state or the accused to impeach credibility by showing prior felony convictions nor the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to sexual assault, aggravated sexual assault, or indecency with a child. If evidence of a previous felony conviction involving sexual conduct or evidence of promiscuous sexual conduct is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

[Acts 1975, 64th Leg., p. 477, ch. 203, § 3, eff. Sept. 1, 1975. Renumbered from § 21.13 and amended by Acts 1983, 68th Leg., p. 5315, ch. 977, § 4, eff. Sept. 1, 1983.]

Subsection 7(b) of the 1975 act provided:

"Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

§ 22.07. Terroristic Threat

(a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

- (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (2) place any person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or
- (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.

(b) An offense under Subdivision (1) or (2) of Subsection (a) of this section is a Class B misdemeanor. An offense under Subdivision (3) of Subsection (a) of this section is a Class A misdemeanor. An offense under Subdivision (4) of Subsection (a) of this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 2, eff. Aug. 27, 1979.]

§ 22.08. Aiding Suicide

(a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious

bodily injury, in which event the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 22.09. Tampering With Consumer Product

(a) In this section:

(1) "Consumer Product" means any product offered for sale to or for consumption by the public and includes "food" and "drugs" as those terms are defined in Section 2, Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes).

(2) "Tamper" means to alter or add a foreign substance to a consumer product to make it probable that the consumer product will cause serious bodily injury.

(b) A person commits an offense if he knowingly or intentionally tampers with a consumer product knowing that the consumer product will be offered for sale to the public or as a gift to another.

(c) An offense under this section is a felony of the third degree unless a person suffers serious bodily injury, in which event it is a felony of the first degree.

[Acts 1983, 68th Leg., p. 2812, ch. 481, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 Act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec.

- 25.01. Bigamy.
- 25.02. Incest.
- 25.03. Interference with Child Custody.
- 25.04. Enticing a Child.
- 25.05. Criminal Nonsupport.
- 25.06. Sale or Purchase of Child.
- 25.06. Solicitation of a Child.
- 25.07. Harboring Runaway Child.
- 25.08. Violation of Court Order.

§ 25.01. Bigamy

(a) An individual commits an offense if:

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

(2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1) of this section that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

(e) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 25.02. Incest

(a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

(1) his ancestor or descendant by blood or adoption;

(2) his stepchild or stepparent, while the marriage creating that relationship exists;

(3) his parent's brother or sister of the whole or half blood;

(4) his brother or sister of the whole or half blood or by adoption; or

(5) the children of his brother or sister of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 25.03. Interference with Child Custody

(a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

(1) knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction and knows that a suit for divorce, or a civil suit or application for habeas corpus to dispose of the child's custody, has been filed.

(b) It is a defense to prosecution under Subsection (a)(2) of this section that the actor returned the child to this state within seven days after the date of the commission of the offense.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1111, ch. 527, § 1, eff. Aug. 27, 1979.]

§ 25.04. Enticing a Child

(a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 25.05. Criminal Nonsupport

(a) An individual commits an offense if he intentionally or knowingly fails to provide support that he can provide and that he was¹ legally obligated to provide for his children younger than 18 years, or for his spouse who is in needy circumstances.

(b) Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section.

(c) For purposes of this section, "insufficient support" means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.

(d) For purposes of this section, "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(e) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense and a spouse shall be a competent witness.

(f) It is an affirmative defense to prosecution under this section that the actor could not provide the support that he was legally obligated to provide.

(g) During the pendency of a prosecution under this section, the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings.

(h) Except as provided in Subsection (i) of this section, an offense under this section is a Class A misdemeanor.

(i) An offense under this section is a felony of the third degree if the actor:

(1) has been convicted one or more times under this section; or

(2) commits the offense while residing in another state.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ So in enrolled bill; probably should read "is".

Acts 1975, 64th Leg., p. 912, ch. 342, § 16, repealed Penal Code (1925), arts. 602 and 602-A (source articles of this section), as amended by Acts 1973, 63rd Leg., p. 603, ch. 257, §§ 1, 2 and art. 602-B, as added by § 3 of the 1973 Act.

For saving provisions see note set out under Section 1.07.

§ 25.06. Sale or Purchase of Child

Text as added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, and amended by Acts 1981, 67th Leg., p. 2211, ch. 514, § 1

(a) A person commits an offense if he:

(1) possesses a child or has the custody, conservatorship, or guardianship of a child, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney or physician for services rendered in the usual course of legal or medical practice; or

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

(c) An offense under this section is a felony of the third degree unless the actor has been convicted

previously under this section, in which event the offense is a felony of the second degree.

[Acts 1977, 65th Leg., p. 81, ch. 38, § 1, eff. March 30, 1977. Amended by Acts 1981, 67th Leg., p. 2211, ch. 514, § 1, eff. Sept. 1, 1981.]

For text of section added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, see § 25.06, post

Section 2 of the 1981 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for offenses committed on or after its effective date. For purposes of this section, an offense is committed on or after the effective date of this Act only if each element of the offense occurs on or after the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 25.06. Solicitation of a Child

Text as added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1

(a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.

(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 of this code¹ apply to this section.

(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardian of the child, in which event the offense is a felony of the third degree.

[Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, eff. June 15, 1977.]

¹ See § 21.01.

For text of section added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, and amended by Acts 1981, 67th Leg., p. 2211, ch. 514, § 1, see § 25.06, ante

§ 25.07. Harboring Runaway Child

(a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

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(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

[Acts 1979, 66th Leg., p. 1155, ch. 558, § 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4750, ch. 831, p. 4750, § 1, eff. Sept. 1, 1983.]

§ 25.08. Violation of Court Order

(a) A person commits an offense if, in violation of an order issued under Section 3.581 or Section 71.11, Family Code, he knowingly or intentionally:

(1) commits family violence;

(2) directly communicates with a member of the family or household in a threatening or harassing manner; or

(3) goes to or near the residence or place of employment or business of a member of the family or household as specifically described in the protective order.

(b) For the purposes of this section, "family violence," "family," "household," and "member of a household" have the following meanings, as given in Section 71.01, Family Code:

(1) "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

(2) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, and a foster child and foster parent, whether or not those individuals reside together.

(3) "Household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

(4) "Member of a household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04, Family Code.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) An offense under this section is a Class B misdemeanor.

[Acts 1983, 68th Leg., p. 4049, ch. 631, § 3, eff., Sept. 1, 1983.]

Section 4 of the 1983 Act provides:

"Section 25.08, Penal Code, as added by this Act applies only to:

"(1) an order issued on or after the effective date of this Act; or
 "(2) an order issued before the effective date of this Act and amended after the effective date of this Act to include the prohibitions required by Subsection (b), Section 71.11, Family Code."

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec.

- 28.01. Definitions.
- 28.02. Arson.
- 28.03. Criminal Mischief.
- 28.04. Reckless Damage or Destruction.
- 28.05. Actor's Interest in Property.
- 28.06. Amount of Pecuniary Loss.

§ 28.01. Definitions

In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, § 1, eff. Sept. 1, 1979.]

§ 28.02. Arson

(a) A person commits an offense if he starts a fire or causes an explosion with intent to destroy or damage any building, habitation, or vehicle:

(1) knowing that it is within the limits of an incorporated city or town;

(2) knowing that it is insured against damage or destruction;

(3) knowing that it is subject to a mortgage or other security interest;

(4) knowing that it is located on property belonging to another;

(5) knowing that it has located within it property belonging to another; or

(6) when he is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(b) It is a defense to prosecution under Subsection (a)(1) of this section that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(c) An offense under this section is a felony of the second degree, unless bodily injury or death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, § 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1837, ch. 425, § 1, eff. Sept. 1, 1981.]

Section 3 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

Section 2 of the 1981 amendatory act provides:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date, and that law is continued in effect for this purpose as if this Act were not in force. For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 28.03. Criminal Mischief

(a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner; or

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person.

(b) An offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$20; or

(B) except as provided in Subdivision (4)(B) of this subsection, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$200;

(3) a Class A misdemeanor if the amount of pecuniary loss is \$200 or more but less than \$750;

(4) a felony of the third degree if:

(A) the amount of pecuniary loss is \$750 or more but less than \$20,000;

(B) regardless of the amount of pecuniary loss, the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or diverts, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for such purpose, any public communications, public water, gas, or power supply;

(C) regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

(D) regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or

(E) regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.

(5) a felony of the second degree if the amount of the pecuniary loss is \$20,000 or more.

(c) For the purposes of this section, it shall be presumed that a person in whose name public communications, public water, gas, or power supply is or was last billed and who is receiving the economic benefit of said communication or supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The term public communication, public transportation, public water, gas, or power supply, or other public service shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas or the Railroad Commission of Texas or any such services enfranchised by the State of Texas or any political subdivision thereof.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 66, ch. 29, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, § 1, eff. Sept. 1, 1983.]

Section 6 of the 1983 amendatory act provides:

“(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

“(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.”

§ 28.04. Reckless Damage or Destruction

(a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 28.05. Actor's Interest in Property

It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 28.06. Amount of Pecuniary Loss

(a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) of this section, the amount of loss is deemed to be greater than \$200 but less than \$750.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

- (1) the amount of pecuniary loss if the property is destroyed; or
- (2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2918, ch. 497, § 2, eff. Sept. 1, 1983.]

Section 6 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

CHAPTER 29. ROBBERY

Sec.

- 29.01. Definitions.
- 29.02. Robbery.
- 29.03. Aggravated Robbery.

§ 29.01. Definitions

In this chapter:

- (1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.
- (2) "Property" means:
 - (A) tangible or intangible personal property including anything severed from land; or
 - (B) a document, including money, that represents or embodies anything of value.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 29.02. Robbery

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 of this code¹ and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or
- (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ Section 31.01 et seq.

§ 29.03. Aggravated Robbery

(a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and he:

- (1) causes serious bodily injury to another; or
 - (2) uses or exhibits a deadly weapon.
- (b) An offense under this section is a felony of the first degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec.

- 30.01. Definitions.
- 30.02. Burglary.
- 30.03. Burglary of Coin-Operated Machines.
- 30.04. Burglary of Vehicles.
- 30.05. Criminal Trespass.

§ 30.01. Definitions

In this chapter:

- (1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:
 - (A) each separately secured or occupied portion of the structure or vehicle; and
 - (B) each structure appurtenant to or connected with the structure or vehicle.
- (2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.
- (3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 30.02. Burglary

(a) A person commits an offense if, without the effective consent of the owner, he:

- (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or
- (2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or
- (3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

- (1) any part of the body; or
- (2) any physical object connected with the body.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a felony of the second degree.

(d) An offense under this section is a felony of the first degree if:

- (1) the premises are a habitation; or

(2) any party to the offense is armed with explosives or a deadly weapon; or

(3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 30.03. Burglary of Coin-Operated Machines

(a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine or other coin-operated contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 30.04. Burglary of Vehicles

(a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 30.05. Criminal Trespass

(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "entry" means the intrusion of the entire body; and

(2) "notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or

(C) a sign or signs posted on the property or at the entrance to the building, reasonably like-

ly to come to the attention of intruders, indicating that entry is forbidden.

(c) An offense under this section is a Class B misdemeanor unless it is committed in a habitation or the actor carries a deadly weapon on or about his person during the commission of the offense, in which event it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2385, ch. 596, § 1, eff. Sept. 1, 1981.]

Section 2 of the 1981 amendatory act provides:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law in existence at the time the offense was committed. That law is continued in effect for this purpose as if this Act were not in force. For the purpose of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurred on or after the effective date."

CHAPTER 31. THEFT

Sec.

31.01. Definitions.

31.02. Consolidation of Theft Offenses.

31.03. Theft.

31.04. Theft of Service.

31.05. Theft of Trade Secrets.

31.06. Presumption for Theft by Check.

31.07. Unauthorized Use of a Vehicle.

31.08. Value.

31.09. Aggregation of Amounts Involved in Theft.

31.10. Actor's Interest in Property.

31.11. Tampering with Identification Numbers.

31.12. Unauthorized Use of Television Decoding and Interception Device.

31.13. Manufacture, Sale, or Distribution of Television Decoding and Interception Device.

§ 31.01. Definitions

In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense; or

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

(3) "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(4) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(D) given solely to detect the commission of an offense.

(5) "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

(6) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(7) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(8) "Steal" means to acquire property or service by theft.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 9, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 31.02. Consolidation of Theft Offenses

Theft as defined in Section 31.03 of this code constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.03. Theft

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent; or

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another.

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice;

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with him, is presumed to know upon receipt by the actor of stolen property (other

than a motor vehicle subject to Article 6687-1, Vernon's Texas Civil Statutes) that the property has been previously stolen from another if the actor pays for or loans against the property \$25 or more (or consideration of equivalent value) and the actor knowingly or recklessly:

(i) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(ii) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(iii) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements.

(4) for the purposes of Subparagraph (i) above, "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual.

(d) Except as provided by Subsection (e) of this section, an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$20;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$20 or more but less than \$200; or

(B) the value of the property stolen is less than \$20 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is \$200 or more but less than \$750;

(4) a felony of the third degree if:

(A) the value of the property stolen is \$750 or more but less than \$20,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than \$750 and the defendant has been previously convicted two or more times of any grade of theft; or

(5) a felony of the second degree if:

(A) regardless of the value, the property is:

(i) combustible hydrocarbon natural or synthetic natural gas, or crude petroleum oil;

(ii) equipment designed for use in exploration for or production of natural gas or crude petroleum oil; or

(iii) equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells;

(B) the value of the property stolen is \$20,000 or more; or

(C) regardless of the value, the property was unlawfully appropriated or attempted to be unlawfully appropriated by threat to commit a felony offense against the person or property of the person threatened or another or to withhold information about the location or purported location of a bomb, poison, or other harmful object that threatens to harm the person or property of the person threatened or another person.

(e) An offense described for purposes of punishment by Subsection (d) of this section is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense; and

(2) the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 10, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 937, ch. 349, § 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 849, ch. 298, § 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2065, ch. 455, § 1, eff. June 11, 1981; Acts 1983, 68th Leg., p. 2918, ch. 497, § 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3244, ch. 558, § 11, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4523, ch. 741, § 1, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

Section 2 of the 1977 amendatory act provided:

"The provisions of Subsections (c)(3) and (4) shall not apply to the purchase or sale of property at a public sale commonly known as a neighborhood garage sale or community-wide flea market or First Monday Sale."

Acts 1981, 67th Leg., p. 849, ch. 298, § 2, and Acts 1981, 67th Leg., p. 2065, ch. 455, § 2, both provide:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

Section 6 of Acts 1983, 68th Leg., p. 2920, ch. 497, provides:

"(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

For applicability of change in law made by Acts 1983, 68th Leg., p. 3246, ch. 558, to offenses committed before effective date of Act, see note under § 36.01.

§ 31.04. **Theft of Service**

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

(b) For purposes of this section, intent to avoid payment is presumed if

(1) the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments; or

(2) the actor failed to return the property held under a rental agreement within 10 days after receiving notice demanding return.

(c) For purposes of Subsection (b)(2) of this section, notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement.

(d) If written notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than \$20;

(2) a Class B misdemeanor if the value of the service stolen is \$20 or more but less than \$200;

(3) a Class A misdemeanor if the value of the service stolen is \$200 or more but less than \$750;

(4) a felony of the third degree if the value of the service stolen is \$750 or more but less than \$20,000;

(5) a felony of the second degree if the value of the service stolen is \$20,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 1138, ch. 429, § 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2920, ch. 497, § 4, eff. Sept. 1, 1983.]

Section 6 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed

before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 31.05. **Theft of Trade Secrets**

(a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret; or

(3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.06. **Presumption for Theft by Check**

(a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of property under Section 31.03 of this code (Theft) or to avoid payment for service under Section 31.04 of this code (Theft of Service) is presumed (except in the case of a post-dated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2) of this section, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

- (1) the check or order;
- (2) the records of the bank or other drawee; or
- (3) the records of the person to whom the check or order has been issued or passed.

(c) If written notice is given in accordance with Subsection (b) of this section, it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.07. Unauthorized Use of a Vehicle

(a) A person commits an offense if he intentional-ly or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.08. Value

(a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

- (1) the fair market value of the property or service at the time and place of the offense; or
- (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

- (1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or
- (2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than \$200 but less than \$750.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the

interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2920, ch. 497, § 5, eff. Sept. 1, 1983.]

Section 6 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 31.09. Aggregation of Amounts Involved in Theft

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.10. Actor's Interest in Property

It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 31.11. Tampering with Identification Numbers

(a) A person commits an offense if, without the effective consent of the owner:

- (1) he knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property other than a motor vehicle; or
- (2) he possesses tangible personal property other than a motor vehicle knowing that the serial number or other permanent identification marking has been removed, altered, or obliterated.

(b) A person commits an offense if:

- (1) he knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on equipment designed for use in exploration for or production of natural gas or crude petroleum oil or equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells; or
- (2) he possesses equipment designed for use in exploration for or production of natural gas or crude petroleum oil or equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells knowing that the serial

number or other permanent marking has been removed, altered, or obliterated.

(c) Property involved in a violation of this section may be treated as stolen for purposes of custody and disposition of the property.

(d) An offense under Subsection (a) of this section is a Class A misdemeanor and an offense under Subsection (b) of this section is a felony of the third degree.

[Acts 1979, 66th Leg., p. 417, ch. 191, § 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4525, ch. 741, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1979 Act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act takes effect is governed by the law existing before the effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

§ 31.12. Unauthorized Use of Television Decoding and Interception Device

(a) A person commits an offense if, with the intent to intercept and decode a transmission by a subscription television service without the authorization of the provider of the service, the person intentionally or knowingly attaches to, causes to be attached to, or incorporates in a television set, video tape recorder, or other equipment designed to receive a television transmission a device that intercepts and decodes the transmission.

(b) "Subscription television service" in this section shall mean a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.

(c) An offense under this section is a class B misdemeanor unless the actor committed the offense for remuneration, in which event it is a Class A misdemeanor.

[Acts 1981, 67th Leg., p. 67, ch. 29, § 2, eff. Aug. 31, 1981.]

Section 3 of the 1981 Act provides:

"(a) A provider of subscription television service may bring an action to enjoin a violation or threatened violation of Section 31.12 or 31.13 of the Penal Code. A party bringing such an action shall be entitled to issuance of such an injunction upon a showing that a violation of Section 31.12 or 31.13 of the Penal Code has occurred or will occur. Irreparable injury, inadequate remedy at law, and probability of recovery need not be shown to prove a prima facie right to such an injunction.

"(b) The court shall award three times actual damages and reasonable attorney's fees to a prevailing plaintiff in an action under this section."

§ 31.13. Manufacture, Sale, or Distribution of Television Decoding and Interception Device

(a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, distributes, or sells, with an intent to aid an offense under Section 31.12 of this code, a device or a plan or part for a device that intercepts and decodes a transmission by a subscription television service.

(b) "Subscription television service" in this section shall mean a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1981, 67th Leg., p. 67, ch. 29, § 2, eff. Aug. 31, 1981.]

Injunction to prevent or halt violation under this section, see note under § 31.12.

CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 32.01. Definitions

In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.02. Value

(a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than \$20 but less than \$200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value

of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.03. Aggregation of Amounts Involved in Fraud

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.04 to 32.20 are reserved for expansion]

SUBCHAPTER B. FORGERY

§ 32.21. Forgery

(a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A) of this subdivision; or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B) of this subdivision.

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) of this section an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check

or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) An offense under this section is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.22. Criminal Simulation

(a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he sells, passes, or otherwise utters an object so made or altered;

(3) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(4) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.23 to 32.30 are reserved for expansion]

SUBCHAPTER C. CREDIT

§ 32.31. Credit Card Abuse

(a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(b) A person commits an offense if:

(1) with intent to obtain property or service fraudulently, he presents or uses a credit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain property or service, he uses a fictitious credit card or the pretended number or description of a fictitious credit card;

(3) he receives property or service that he knows has been obtained in violation of this section;

(4) he steals a credit card or, with knowledge that it has been stolen, receives a credit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card;

(7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card with intent to use it;

(9) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a credit card is incomplete if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.32. False Statement to Obtain Property or Credit

(a) For purposes of this section, "credit" includes:

- (1) a loan of money;
- (2) furnishing property or service on credit;
- (3) extending the due date of an obligation;
- (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
- (5) a line or letter of credit; and
- (6) a credit card, as defined in Section 32.31 of this code (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.33. Hindering Secured Creditors

(a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

- (1) to pay the part then due; and
- (2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) Except as provided in Subsections (e) and (f) of this section, an offense under this section is a Class A misdemeanor.

(e) If the actor removes the property, the offense is a felony of the third degree.

(f) A person commits an offense if he transfers or otherwise disposes of secured property without the

effective consent of the secured party and with intent to appropriate (as defined in Chapter 31 of this code) the interest of the secured party. An offense under this subsection is:

(1) a Class A misdemeanor if the unpaid balance remaining on the secured indebtedness is less than \$10,000;

(2) a felony of the third degree if the unpaid balance remaining on the secured indebtedness is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 501, ch. 232, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before this Act's effective date, which law is continued in effect for this purpose as if this Act were not in force. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 32.34. Fraud in Insolvency

(a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors;

(2) he intentionally falsifies any writing or record relating to the property or any claim against the debtor; or

(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution

(a) A person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:

(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or

(2) it is about to suspend operations or go into receivership.

(b) It is a defense to prosecution under this section that the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 32.36 to 32.40 reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

§ 32.41. Issuance of Bad Check

(a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) of this section may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

- (1) the check or order;
- (2) the records of the bank or other drawee; or
- (3) the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated

through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court, by certified checks, cashiers checks, or money order only, payable to the person that received the bad checks.

(f) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5050, ch. 911, § 1, eff. Aug. 29, 1983.]

§ 32.42. Deceptive Business Practices

(a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and

which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, §§ 1, 2, eff. Sept. 1, 1975.]

§ 32.43. Commercial Bribery

(a) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;

(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) of this section.

(d) An offense under this section is a felony of the third degree.

(e) In lieu of a fine that is authorized by Subsection (d) of this section, and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b) of this section, the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) of this code to an offense under this section committed by a corporation or association.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1942, ch. 357, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 32.44. Rigging Publicly Exhibited Contest

(a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) of this section.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.45. Misapplication of Fiduciary Property or Property of Financial Institution

(a) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class A misdemeanor if the value of the property misapplied is less than \$200;

(2) a felony of the third degree if the value of the property is \$200 or more but less than \$10,000;

(3) a felony of the second degree if the value of the property is \$10,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.46. Securing Execution of Document by Deception

(a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.47. Fraudulent Destruction, Removal, or Concealment of Writing

(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.48. Endless Chain Scheme

(a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive com-

pensation when a person introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 32.49. Issuance of Checks Printed on Red Paper

(a) A person commits an offense if he issues a check or similar sight order for payment of money printed on dark red or other colored paper that prevents reproduction of an image of the order by microfilming or other similar reproduction equipment, knowing that the colored paper prevents reproduction.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1979, 66th Leg., p. 865, ch. 389, § 1, eff. Sept. 1, 1979.]

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec.

- 36.01. Definitions.
- 36.02. Bribery.
- 36.03. Coercion of Public Servant or Voter.
- 36.04. Improper Influence.
- 36.05. Tampering with Witness.
- 36.06. Retaliation.
- 36.07. Repealed.
- 36.08. Gift to Public Servant by Person Subject to His Jurisdiction.
- 36.09. Offering Gift to Public Servant.
- 36.10. Non-Applicable.

§ 36.01. Definitions

In this chapter:

(1) "Coercion" means a threat, however communicated:

- (A) to commit any offense;
- (B) to inflict bodily injury on the person threatened or another;
- (C) to accuse any person of any offense;
- (D) to expose any person to hatred, contempt, or ridicule;
- (E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Benefit" means anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

(6) "Vote" means to cast a ballot in an election regulated by law.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, § 1, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

Section 12 of the 1983 amendatory act provides:

"(a) the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

- (1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or
- (2) the public servant ceases to be a public servant.

(d) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, § 2, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 36.03. Coercion of Public Servant or Voter

(a) A person commits an offense if by means of coercion he:

- (1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty; or
- (2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 36.04. Improper Influence

(a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 36.05. Tampering with Witness

(a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a wit-

ness or prospective witness in an official proceeding:

- (1) to testify falsely;
- (2) to withhold any testimony, information, document, or thing;
- (3) to elude legal process summoning him to testify or supply evidence; or
- (4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) of this section.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 36.06. Retaliation

(a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, prospective witness, or informant.

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3238, ch. 558, § 4, eff. Sept. 1, 1983.]

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 36.07. Repealed by Acts 1983, 68th Leg., p. 3238, ch. 558, § 3, eff. Sept. 1, 1983

For applicability of change in law made by 1983 repealing act to offenses committed before effective date of act, see note under § 36.01.

§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, § 5, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 36.10. Non-Applicable

Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he

gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(A) not more than one honorarium is received from the same person in a calendar year; and

(B) not more than one honorarium is received for the same service; and

(C) the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the recipient in performance of the services;

(D) the honorarium, regardless of amount, is reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act;

(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or

(5) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), or Section 243, Texas Election Code (Article 14.07, Vernon's Texas Election Code), that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, § 6, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec.

37.01. Definitions.

37.02. Perjury.

Sec.

- 37.03. Aggravated Perjury.
- 37.04. Materiality.
- 37.05. Retraction.
- 37.06. Inconsistent Statements.
- 37.07. Irregularities No Defense.
- 37.08. False Report to Peace Officer.
- 37.09. Tampering With or Fabricating Physical Evidence.
- 37.10. Tampering with Governmental Record.
- 37.11. Impersonating Public Servant.
- 37.12. False Identification as Peace Officer.

§ 37.01. Definitions

In this chapter:

- (1) "Governmental record" means anything:
 - (A) belonging to, received by, or kept by government for information; or
 - (B) required by law to be kept by others for information of government.
- (2) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.
- (3) "Statement" means any representation of fact.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.02. Perjury

(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

- (1) he makes a false statement under oath or swears to the truth of a false statement previously made; and
- (2) the statement is required or authorized by law to be made under oath.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.03. Aggravated Perjury

(a) A person commits an offense if he commits perjury as defined in Section 37.02 of this code, and the false statement:

- (1) is made during or in connection with an official proceeding; and
- (2) is material.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.04. Materiality

(a) A statement is material, regardless of the admissibility of the statement under the rules of

evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.05. Retraction

It is a defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the actor retracted his false statement:

- (1) before completion of the testimony at the official proceeding; and
- (2) before it became manifest that the falsity of the statement would be exposed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.06. Inconsistent Statements

An information or indictment for perjury under Section 37.02 of this code or aggravated perjury under Section 37.03 of this code that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.07. Irregularities No Defense

(a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.08. False Report to Peace Officer

(a) A person commits an offense if he:

- (1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or

(2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.09. Tampering With or Fabricating Physical Evidence

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.10. Tampering with Governmental Record

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

(b) It is an exception to the application of Subsection (a)(3) of this section that the governmental record is destroyed pursuant to legal authorization.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.11. Impersonating Public Servant

(a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 37.12. False Identification as Peace Officer

(a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card or document that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the card or document knows that the person so identified by the card or document is not certified or licensed by the Commission on Law Enforcement Officer Standards and Education in the capacity of peace officer or reserve law enforcement officer indicated on the card or document.

(b) It is a defense to prosecution under this section that:

(1) the card or document clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse; or

(2) the person identified as a peace officer or reserve law enforcement officer by the card or document was certified or licensed in that capacity when the card or document was made.

(c) In this section, "reserve law enforcement officer" has the same meaning as is given that term in Section 6, Chapter 546, Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes).

(d) An offense under this section is a Class C misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class B misdemeanor.

[Acts 1983, 68th Leg., p. 5672, ch. 1075, § 1, eff. Sept. 1, 1983.]

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec.	
38.01.	Definitions.
38.02.	Failure to Identify as Witness.
38.03.	Resisting Arrest or Search.
38.04.	Evading Arrest.
38.05.	Hindering Apprehension or Prosecution.
38.06.	Compounding.
38.07.	Escape.
38.08.	Permitting or Facilitating Escape.
38.09.	Effect of Unlawful Custody.
38.10.	Implements for Escape.
38.11.	Bail Jumping and Failure to Appear.
38.12.	Barratry.

Sec.

- 38.13. Hindering Proceedings by Disorderly Conduct.
- 38.14. Preventing Execution of Civil Process.

§ 38.01. Definitions

In this chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(5) "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.02. Failure to Identify as Witness

(a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.03. Resisting Arrest or Search

(a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest or search of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.04. Evading Arrest

(a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him.

(b) It is an exception to the application of this section that the attempted arrest is unlawful.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.05. Hindering Apprehension or Prosecution

(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.06. Compounding

(a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

(b) It is a defense to prosecution under this section that the benefit received was:

(1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and

(2) the result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 2660, ch. 716, § 1, eff. Sept. 1, 1981.]

§ 38.07. Escape

(a) A person arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

(b) Except as provided in Subsections (c) and (d) of this section, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

- (1) is under arrest for, charged with, or convicted of a felony; or
- (2) is confined in a penal institution.

(d) An offense under this section is a felony of the second degree if the actor used or threatened to use a deadly weapon to effect his escape.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.08. Permitting or Facilitating Escape

(a) An official or employee of an institution that is responsible for maintaining persons in custody commits an offense if he intentionally, knowingly, or recklessly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

- (1) an allegation or adjudication of delinquency; or
- (2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if:

- (1) the person in custody was under arrest for, charged with or convicted of a felony;
- (2) the person in custody was confined in a penal institution;
- (3) the actor used or threatened to use a deadly weapon to effect the escape; or
- (4) the offense under Subsection (a) of this section was committed intentionally.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.09. Effect of Unlawful Custody

It is no defense to prosecution under Section 38.07 (Escape) or 38.08 (Facilitating Escape) of this code that the custody was unlawful.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.10. Implements for Escape

(a) A person commits an offense if, with intent to facilitate escape, he introduces into a penal institution, or provides an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.11. Bail Jumping and Failure to Appear

(a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) This section does not apply to appearances incident to probation or parole.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required is classified as a felony.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.12. Barratry

(a) A person commits an offense if, with intent to obtain a benefit for himself or to harm another he:

- (1) institutes any suit or claim in which he knows he has no interest;
- (2) institutes any suit or claim that he knows is false;
- (3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or
- (4) procures another to solicit for him employment to prosecute or defend a suit or to collect a claim.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.13. Hindering Proceedings by Disorderly Conduct

(a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 38.14. Preventing Execution of Civil Process

(a) A person commits an offense if he intentionally or knowingly prevents the execution of any process in a civil cause.

(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.

(c) An offense under this section is a Class C misdemeanor.

[Acts 1977, 65th Leg., p. 1136, ch. 427, § 1, eff. Aug. 29, 1977.]

CHAPTER 39. ABUSE OF OFFICE

Sec.

- 39.01. Official Misconduct.
- 39.02. Official Oppression.
- 39.021. Violations of the Civil Rights of a Prisoner.
- 39.022. Failure to Report Death of Prisoner.
- 39.03. Misuse of Official Information.
- 39.04. Transferred

§ 39.01. Official Misconduct

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm another, he intentionally or knowingly:

- (1) violates a law relating to his office or employment; or
- (2) misapplies any thing of value belonging to the government that has come into his custody or possession by virtue of his office or employment.

(b) An offense under Subsection (a)(1) of this section is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) of this section is:

- (1) a Class C misdemeanor if the value of the use of the thing misapplied is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing misapplied is \$20 or more but less than \$200;

(3) a Class A misdemeanor if the value of the use of the thing misapplied is \$200 or more but less than \$750;

(4) a felony of the third degree if the value of the use of the thing misapplied is \$750 or more but less than \$20,000; and

(5) a felony of the second degree if the value of the use of the thing misapplied is \$20,000 or more.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3241, ch. 558, § 7, eff. Sept. 1, 1983.]

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 39.02. Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:

- (1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or
- (2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 39.021. Violations of the Civil Rights of a Prisoner

(a) A jailer or guard employed at a municipal or county jail or by the Texas Department of Corrections or a peace officer commits an offense if he:

- (1) intentionally subjects a person in custody to bodily injury knowing his conduct is unlawful;
- (2) willfully denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.

(b) An offense under this section is a felony of the third degree. An offense under this section is a felony of the second degree if serious bodily injury occurs or a felony of the first degree if death occurs.

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.

(e) In this section, "custody" means the detention, arrest, or confinement of a person.

[Acts 1979, 66th Leg., p. 1383, ch. 618, § 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3242, ch. 558, § 8, eff. Sept. 1, 1983.]

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 39.022. Failure to Report Death of Prisoner

(a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.03(b), Code of Criminal Procedure, 1965, and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1983, 68th Leg., p. 2510, ch. 441, § 2, eff. Sept. 1, 1983.]

Section 3 of the 1983 Act provides:

"The change in the law made by this Act applies only to a report required to be filed after the death of a prisoner who dies on or after the effective date of this Act."

§ 39.03. Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which he has access in his official capacity and which has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) speculates or aids another to speculate on the basis of the information.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3243, ch. 558, § 9, eff. Sept. 1, 1983.]

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of act, see note under § 36.01.

§ 39.04. Transferred to Civil Statutes, art. 6252-9e

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec.

42.01. Disorderly Conduct.

42.02. Riot.

Sec.

42.03. Obstructing Highway or Other Passageway.

42.04. Defense When Conduct Consists of Speech or Other Expression.

42.05. Disrupting Meeting or Procession.

42.06. False Alarm or Report.

42.07. Harassment.

42.08. Public Intoxication.

42.09. Desecration of Venerated Object.

42.10. Abuse of Corpse.

42.11. Cruelty to Animals.

42.111. Dog Fighting.

42.12. Repealed.

42.13. Interference with Emergency Communication.

§ 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) while on the premises of a hotel or comparable establishment, for a lewd or unlawful purpose looks into a guest room not his own through a window or other opening in the room;

(9) discharges a firearm in a public place other than a public road;

(10) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(11) discharges a firearm on or across a public road; or

(12) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) of this section that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(9) or (a)(10) of this section, in which event it is a Class B misdemeanor; and further provide¹ that a person who violates Subsection (a)(11) is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200, on a second conviction is punishable by a fine of not less than \$200 nor more than \$500, and on a third or subsequent conviction is punishable by a fine of \$500.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 181, ch. 89, §§ 1, 2, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4641, ch. 800, § 1, eff. Sept. 1, 1983.]

¹So in original.

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 42.02. Riot

(a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

- (1) creates an immediate danger of damage to property or injury to persons;
- (2) substantially obstructs law enforcement or other governmental functions or services; or
- (3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) of this section, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) of this section, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

- (1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.03. Obstructing Highway or Other Passageway

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.04. Defense When Conduct Consists of Speech or Other Expression

(a) If conduct that would otherwise violate Section 42.01(a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) of this code consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01(a)(5) or 42.03 of this code:

- (1) that in circumstances in which this section requires an order no order was given;
- (2) that an order, if given, was manifestly unreasonable in scope; or
- (3) that an order, if given, was promptly obeyed.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.05. Disrupting Meeting or Procession

(a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.06. False Alarm or Report

(a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

- (1) cause action by an official or volunteer agency organized to deal with emergencies;
- (2) place a person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, § 4, eff. Aug. 27, 1979.]

§ 42.07. Harassment

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

- (1) initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
- (2) threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict serious bodily injury on the person or to commit a felony against the person, a member of his family, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection; or

(6) knowingly permits a telephone under his control to be used by a person to commit an offense under this section.

(b) For purposes of Subsection (a)(1) of this section, "obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2204, ch. 411, § 1, eff. Sept. 1, 1983.]

Section 2 of the 1983 amendatory act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law as it existed when the offense was committed, and the former law is continued in effect for that purpose.

"(b) For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date of this Act."

§ 42.08. Public Intoxication

(a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

(d) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.09. Desecration of Venerated Object

(a) A person commits an offense if he intentionally or knowingly desecrates:

- (1) a public monument;
- (2) a place of worship or burial; or
- (3) a state or national flag.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.10. Abuse of Corpse

(a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

(1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;

(2) conceals a human corpse knowing it to be illegally disinterred;

(3) sells or buys a human corpse or in any way traffics in a human corpse; or

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 42.11. Cruelty to Animals

(a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(d) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 12, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 42.111. Dog Fighting

(a) A person commits an offense if he intentionally or knowingly:

(1) causes a dog to fight with another dog;

(2) for a pecuniary benefit causes a dog to fight with another dog;

(3) participates in the earnings of or operates a facility used for dog fighting;

(4) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or

(6) attends as a spectator an exhibition of dog fighting.

(b) In this section, "dog fighting" means any situation in which one dog attacks or fights with another dog.

(c) A party to an offense under Subdivision (2), (3), or (4) of Subsection (a) of this section may be required to furnish evidence or testify about the offense but may not be prosecuted for the offense about which he is required to furnish evidence or testify.

(d) A conviction under Subdivision (2), (3), or (4) of Subsection (a) of this section may be had upon the uncorroborated testimony of a party to the offense.

(e) It is a defense to prosecution under Subdivision (1) or (2) of Subsection (a) of this section that the actor caused a dog to fight with another dog to protect livestock, other property, or a person from the other dog, and for no other purpose.

(f) An offense under Subdivision (1) or (5) of Subsection (a) of this section is a Class A misdemeanor. An offense under Subdivision (2), (3), or (4) of Subsection (a) of this section is a felony of the third degree. An offense under Subdivision (6) of Subsection (a) of this section is a Class C misdemeanor.

[Acts 1983, 68th Leg., p. 1610, ch. 305, § 1, eff. Sept. 1, 1983.]

§ 42.12. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

§ 42.13. Interference with Emergency Communication

(a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency.

(b) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

(c) An offense under this section is a Class B misdemeanor unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of \$1,000 occurs, in which event the offense is a felony of the third degree.

[Acts 1979, 66th Leg., p. 806, ch. 365, § 1, eff. Aug. 27, 1979.]

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

Sec.

- 43.01. Definitions.
- 43.02. Prostitution.
- 43.03. Promotion of Prostitution.
- 43.04. Aggravated Promotion of Prostitution.
- 43.05. Compelling Prostitution.
- 43.06. Accomplice Witness: Testimony and Immunity.

SUBCHAPTER B. OBSCENITY

- 43.21. Definitions.
- 43.22. Obscene Display or Distribution.
- 43.23. Obscenity.
- 43.24. Sale, Distribution, or Display of Harmful Material to Minor.
- 43.25. Sexual Performance by a Child.

SUBCHAPTER A. PROSTITUTION

§ 43.01. Definitions

In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 of this code.

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.

(5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 373, ch. 168, § 2, eff. Aug. 27, 1979.]

§ 43.02. Prostitution

(a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) of this section whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 757, ch. 286, § 1, eff. May 27, 1977.]

§ 43.03. Promotion of Prostitution

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 758, ch. 287, § 1, eff. May 27, 1977.]

§ 43.04. Aggravated Promotion of Prostitution

(a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 43.05. Compelling Prostitution

(a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 43.06. Accomplice Witness: Testimony and Immunity

(a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

[Sections 43.07 to 43.20 reserved for expansion]

SUBCHAPTER B. OBSCENITY

§ 43.21. Definitions

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality;¹ or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute; circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 372, ch. 163, § 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1974, ch. 778, § 1, eff. Sept. 1, 1979.]

¹So in original.

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. If any portion of this Act is declared unlawful by a court of competent jurisdiction, this declaration does not invalidate any other portions of this Act.

"Sec. 4. This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date of this Act, and Sections 43.21 and 43.23, Penal Code, as in existence before the effective date of this Act, are continued in effect for this purpose as if this Act were not in effect. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense is committed before the effective date."

§ 43.22. Obscene Display or Distribution

(a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 43.23. Obscenity

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) A person commits an offense if, knowing its content and character, he:

- (1) promotes or possesses with intent to promote any obscene material or obscene device; or
- (2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) of this section is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise prescribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1975, ch. 778, § 2, eff. Sept. 1, 1979.]

Sections 3 and 4 of the 1979 amendatory act provided:

"Sec. 3. If any portion of this Act is declared unlawful by a court of competent jurisdiction, this declaration does not invalidate any other portions of this Act.

"Sec. 4. This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence before the effective date of this Act, and Sections 43.21 and 43.23, Penal Code, as in existence before the effective date of this Act, are continued in effect for this purpose as if this Act were not in effect. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense is committed before the effective date."

§ 43.24. Sale, Distribution, or Display of Harmful Material to Minor

(a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 43.25. Sexual Performance by a Child

(a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 17 years of age.

(2) "Obscene sexual performance" means any performance that includes sexual conduct by a child younger than 17 years of age of any material that is obscene, as that term is defined by Section 43.21 of this code.

(3) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

(4) "Performance" means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which the persons engaging in the conduct exhibit any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" has the meaning defined by Section 43.01 of this code.

(8) "Sado-masochistic abuse" has the meaning defined by Section 43.24 of this code.

(b) A person commits an offense if, knowing the character and content thereof, he employs, autho-

rizes, or induces a child younger than 17 years of age to engage in a sexual performance. A parent or legal guardian or custodian of a child younger than 17 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) of this section is a felony of the second degree.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes an obscene performance that includes sexual conduct by a child younger than 17 years of age.

(e) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 17 years of age.

(f) An offense under Subsection (d) or (e) of this section is a felony of the third degree.

(g) It is an affirmative defense to a prosecution under this section that the defendant, in good faith, reasonably believed that the person who engaged in the sexual conduct was 17 years of age or older.

(h) When it becomes necessary for the purposes of this section to determine whether a child who participated in sexual conduct was younger than 17 years of age, the court or jury may make this determination by any of the following methods:

- (1) personal inspection of the child;
- (2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;
- (3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;
- (4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or
- (5) any other method authorized by law or by the rules of evidence at common law.

[Acts 1977, 65th Leg., p. 1035, ch. 381, § 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1976, ch. 779, § 1, eff. Sept. 1, 1979.]

Section 2 of the 1979 amendatory act provided:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence when the offense was committed, and Section 43.25, Penal Code, as in existence before the effective date of this Act, is continued in effect for this purpose as if this Act were not in effect. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Sec.

- 46.01. Chapter Definitions.
- 46.02. Unlawful Carrying Weapons.
- 46.03. Non-Applicable.
- 46.04. Places Weapons Prohibited.
- 46.05. Unlawful Possession of Firearm by Felon.
- 46.06. Prohibited Weapons.
- 46.07. Unlawful Transfer of Firearm.
- 46.08. Interstate Purchase.
- 46.09. Hoax Bombs.
- 46.10. Components of Explosives.

§ 46.01. Chapter Definitions

In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

- (A) blackjack;
- (B) nightstick;
- (C) mace;
- (D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Illegal knife" means a:

- (A) knife with a blade over five and one-half inches;
- (B) a hand instrument designed to cut or stab another by being thrown;
- (C) dagger, including but not limited to a dirk, stiletto, and poniard;
- (D) bowie knife;

(E) sword; or

(F) spear.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

Text of subdivision as added by Acts 1983, 68th Leg., p. 2650, ch. 457, § 1

(12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

Text of subdivision as added by Acts 1983, 68th Leg., p. 4830, ch. 852, § 1

(12) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of causing an adverse psychological or physiological effect on a human being.

(13) "Hoax bomb" means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 13, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, § 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4830, ch. 852, § 1, eff. Sept. 1, 1983.]

For saving provisions see note set out under Section 1.07.

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Section 6 of Acts 1983, 68th Leg., p. 4833, ch. 852, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 46.02. Unlawful Carrying Weapons

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 46.03. Non-Applicable

(a) The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a private security guard to protect persons or property, in which event he must comply with Subdivision (5) of this subsection;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity;

(5) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(6) who is a peace officer.

(b) The provision of Section 46.02 of this code prohibiting the carrying of a club does not apply to a noncommissioned security guard at an institution of higher education who carries a nightstick or similar club, and who has undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this section, "nonviolent restraint" means the use of

reasonable force, not intended and not likely to inflict bodily injury.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 109, ch. 49, § 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, § 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, § 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1879, ch. 746, § 26, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2273, ch. 552, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5113, ch. 931, § 1, eff. Aug. 29, 1983.]

For saving provisions of Acts 1975, 64th Leg., ch. 342, see note set out under Section 1.07.

§ 46.04. Places Weapons Prohibited

(a) A person commits an offense if, with a firearm, or explosive weapon, or illegal knife, he intentionally, knowingly, or recklessly goes:

(1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while absentee balloting is in progress; or

(3) in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court.

(b) It is a defense to prosecution that the actor possessed a firearm under Subdivision (1), (2), or (3) of Subsection (a) of this section while in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) An offense under this section is a third degree felony.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2962, ch. 508, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1983 amendatory act provides:

"If any provision, section, or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect the provisions or applications hereof which can be given effect without the invalid provision, section, or clause, and to this end the provisions of this Act are declared to be severable."

§ 46.05. Unlawful Possession of Firearm by Felon

(a) A person who has been convicted of a felony involving an act of violence or threatened violence to a person or property commits an offense if he possesses a firearm away from the premises where he lives.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 46.06. Prohibited Weapons

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) an explosive weapon;
- (2) a machine gun;
- (3) a short-barrel firearm;
- (4) a firearm silencer;
- (5) a switchblade knife;
- (6) knuckles; or

Text of subdivision as added by Acts 1983, 68th Leg., p. 2650, ch. 457, § 2

- (7) armor-piercing ammunition.

Text of subdivision as added by Acts 1983, 68th Leg., p. 4831, ch. 852, § 2

- (7) a chemical dispensing device.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.¹

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio; or

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b) of this section.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event, it is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 918, ch. 342, § 15, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, § 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4831, ch. 852, § 2, eff. Sept. 1, 1983.]

¹ 26 U.S.C.A. § 5801 et seq.

For saving provisions see note set out under Section 1.07. Section 6 of Acts 1983, 68th Leg., p. 4833, ch. 852, § 2, provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 46.07. Unlawful Transfer of Firearm

(a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm; or

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 46.08. Interstate Purchase

A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.¹

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ 18 U.S.C.A. § 922(b)(3)(A).

§ 46.09. Hoax Bombs

(a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

[Acts 1983, 68th Leg., p. 4831, ch. 852, § 3, eff. Sept. 1, 1983.]

Section 6 of the 1983 Act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

§ 46.10. Components of Explosives

(a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

[Acts 1983, 68th Leg., p. 4832, ch. 852, § 4, eff. Sept. 1, 1983.]

Section 6 of the 1983 Act provides:

"(a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

"(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

CHAPTER 47. GAMBLING**Sec.**

- 47.01. Definitions.
- 47.02. Gambling.
- 47.03. Gambling Promotion.
- 47.04. Keeping a Gambling Place.
- 47.05. Communicating Gambling Information.
- 47.06. Possession of Gambling Device or Equipment.
- 47.07. Possession of Gambling Paraphernalia.
- 47.08. Evidence.
- 47.09. Testimonial Immunity.
- 47.10. Bingo.

§ 47.01. Definitions

In this chapter:

(1) "Bet" means an agreement that, dependent on chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) contracts of indemnity of¹ guaranty, or life, health, property, or accident insurance; or

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest.

(2) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, the receiving, holding, recording, or forwarding of bets or offers to bet, or the conducting of a lottery or the playing of gambling devices.

(3) "Gambling device" means any mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(4) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered and designed to enhance the actor's chances of winning.

(5) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(6) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(7) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(8) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

¹ So in enrolled bill; probably should read "or".

§ 47.02. Gambling

(a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct was permitted under the Bingo Enabling Act.¹

(d) An offense under this section is a Class C misdemeanor.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., 1st C.S., p. 101, ch. 11, § 43, eff. Nov. 10, 1981.]

¹ Civil Statutes, art. 179d.

§ 47.03. Gambling Promotion

(a) A person commits an offense if he intentionally or knowingly does any of the following acts:

(1) operates or participates in the earnings of a gambling place;

(2) receives, records, or forwards a bet or offer to bet;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 47.04. Keeping a Gambling Place

(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is an affirmative defense to prosecution under this section that the gambling place is aboard

an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling place on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel that is used as a gambling place is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the gambling place while the vessel is in the territorial waters of this state; and

(4) the gambling place is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(d) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 667, ch. 251, § 1, eff. Aug. 29, 1977.]

§ 47.05. Communicating Gambling Information

(a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 47.06. Possession of Gambling Device or Equipment

(a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

Text of subsec. (c) as added by Acts 1977, 65th Leg., p. 668, ch. 251, § 2

(c) It is an affirmative defense to prosecution under this section that the device or equipment is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device or equipment on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the device or equipment is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device or equipment is located while the vessel is in the territorial waters of this state; and

(4) the device or equipment is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

Text of subsec. (c) as added by Acts 1977, 65th Leg., p. 1865, ch. 741, § 1

(c) It is a defense to prosecution under this section that the gambling device was manufactured prior to 1940 and not used for gambling, gambling promotion, or keeping a gambling place under Sections 47.02, 47.03, and 47.04, respectively, of this code, and that the party possessing same:

(1) within 30 days after coming into possession of same or the effective date of this amendment, whichever last occurs, furnished the following information to the sheriff of the county wherein such device is to be maintained:

(A) the name and address of the party possessing same

(B) the name of the manufacturer, date of manufacture, and serial number of the device, if available, and

(2) within 30 days of the transfer of such device advises the sheriff of the county to whom the information provided for in item (1) above was furnished of the name and address of the transferee.

(d) An offense under this section is a felony of the third degree.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 668, ch. 251, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, § 1, eff. Aug. 29, 1977.]

§ 47.07. Possession of Gambling Paraphernalia

(a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(b) It is an affirmative defense to prosecution under this section that the gambling paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the gambling paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the gambling paraphernalia is located while the vessel is in the territorial waters of this state; and

(4) the gambling paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(c) An offense under this section is a Class A misdemeanor.

(d) The district or county attorney shall not be required to have a search warrant or subpoena to enter the vessel to inspect the gambling paraphernalia.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 668, ch. 251, § 3, eff. Aug. 29, 1977.]

§ 47.08. Evidence

(a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.

(b) In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 47.09. Testimonial Immunity

(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

[Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974.]

§ 47.10. Bingo

It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Bingo Enabling Act.¹

[Acts 1981, 67th Leg., 1st C.S., p. 102, ch. 11, § 44, eff. Nov. 10, 1981.]

¹ Civil Statutes, art. 179d.

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH**§ 48.01. Smoking Tobacco**

(a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance and/or public place and that an offense is punishable by a fine not to exceed \$200.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 744, ch. 290, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall not preempt any ordinance adopted by a government entity now or in the future which prohibits the possession of lighted tobacco products or prohibits the smoking of tobacco within the jurisdiction of said governmental entity."

TITLE 11. ORGANIZED CRIME

CHAPTER 71. ORGANIZED CRIME

Sec.

71.01. Definitions.

71.02. Engaging in Organized Criminal Activity.

71.03. Defenses Excluded.

71.04. Testimonial Immunity.

71.05. Renunciation Defense.

§ 71.01. Definitions

In this chapter,

(a) "combination" means five or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

[Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.02. Engaging in Organized Criminal Activity

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same; or

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (7) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (7) of Subsection (a) of this section that the person conspired to commit.

[Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2373, ch. 587, §§ 1 to 3, eff. Sept. 1, 1981.]

Section 6 of the 1981 amendatory act provides:

"This Act applies only to offenses committed on or after its effective date. A criminal action for an offense committed before this Act's effective date is governed by the law in existence when the offense was committed, and Section 71.02, Penal Code, as in existence before the effective date of this Act, is continued in force for this purpose as if this Act were not in force. For the purpose of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

§ 71.03. Defenses Excluded

It is no defense to prosecution under Section 71.02 of this code that:

(1) one or more members of the combination are not criminally responsible for the object of offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 of this code; or

(4) once the initial combination of five or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

[Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.04. Testimonial Immunity

(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

[Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.05. Renunciation Defense

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an

offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

(b) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

[Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2374, ch. 587, §§ 4, 5, eff. Sept. 1, 1981.]

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