

**PENAL CODE**  
**TITLE 1. INTRODUCTORY PROVISIONS**  
**CHAPTER 1. GENERAL PROVISIONS**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 suspected, 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 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 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 311.011, 311.012, 311.014, 311.015, and 311.021 through 311.032 of Chapter 311, Government Code (Code Construction Act), apply to the construction of this code.

(c) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next-larger unit of this code in which the reference appears.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1985, 69th Leg., ch. 479, Sec. 69, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 1.07. DEFINITIONS. (a) In this code:

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

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

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

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

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

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

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

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

(9) "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;

(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.

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

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

(12) "Controlled substance" has the meaning assigned by

Section 481.002, Health and Safety Code.

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

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) "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.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) "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.

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

(21) "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.

(22) "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.

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

(24) "Government" means:

- (A) the state;
- (B) a county, municipality, or political subdivision of the state; or
- (C) any branch or agency of the state, a county, municipality, or political subdivision.

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

(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

(27) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.144, eff. September 1, 2009.

(28) "Intentional" is defined in Section 6.03 (Culpable Mental States).

(29) "Knowing" is defined in Section 6.03 (Culpable Mental States).

(30) "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.

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

(32) "Oath" includes affirmation.

(33) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) "Omission" means failure to act.

(35) "Owner" means a person who:

(A) 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; or

(B) is a holder in due course of a negotiable instrument.

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

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

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

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

(40) "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.

(41) "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.

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

(43) "Reckless" is defined in Section 6.03 (Culpable Mental States).

(44) "Rule" includes regulation.

(45) "Secure correctional facility" means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) "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.

(46-a) "Sight order" means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

(46-b) "Federal special investigator" means a person described by Article 2.122, Code of Criminal Procedure.

(47) "Swear" includes affirm.

(48) "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.

(49) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(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, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 912, ch. 342, Sec. 1, eff. Sept.

1, 1975; Acts 1977, 65th Leg., p. 2123, ch. 848, Sec. 1, eff. Aug.

29, 1977; Acts 1979, 66th Leg., p. 1113, ch. 530, Sec. 1, eff. Aug.

27, 1979; Acts 1979, 66th Leg., p. 1520, ch. 655, Sec. 1, eff. Sept.

1, 1979; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(43), eff. Sept.

1, 1987; Acts 1989, 71st Leg., ch. 997, Sec. 1, eff. Aug. 28, 1989;

Acts 1991, 72nd Leg., ch. 543, Sec. 1, eff. Sept. 1, 1991; Acts

1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003,

78th Leg., ch. 822, Sec. 2.01, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.144, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 421 (H.B. 2031), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 1, eff. September 1, 2011.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.09. CONCURRENT JURISDICTION UNDER THIS CODE TO PROSECUTE OFFENSES THAT INVOLVE STATE PROPERTY. With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute under this code any offense an element of which occurs on state property or any offense that involves the use, unlawful appropriation, or misapplication of state property, including state funds.

Added by Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 1, eff. June 15, 2007.

## CHAPTER 2. BURDEN OF PROOF

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 2.05. PRESUMPTION. (a) Except as provided by Subsection (b), 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.

(b) When this code or another penal law establishes a presumption in favor of the defendant 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, that:

(A) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;

(B) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;

(C) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and

(D) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 912, ch. 342, Sec. 2, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 288 (H.B. 823), Sec. 2, eff. September 1, 2005.

### CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or

(2) the offenses are the repeated commission of the same or similar offenses.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1987, 70th Leg., ch. 387, Sec. 1, eff. Sept. 1, 1987;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. (a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with

violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;

(5) an offense:

(A) under Section 20A.02 or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections; or

(6) an offense:

(A) under Section 22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of

more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

(b-1) Subsection (b)(4) does not apply to a defendant whose case was transferred to the court under Section 54.02, Family Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 596, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 667, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 527 (H.B. 904), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.47, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1291 (S.B. 6), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 21, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 228 (H.B. 220), Sec. 1, eff. September 1, 2013.

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02, 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 do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

(c) The right to severance under this section does not apply to a prosecution for offenses described by Section 3.03(b) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may

order the offenses to be tried separately or may order other relief as justice requires.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 667, Sec. 3, eff. Sept. 1, 1997.  
Amended by:

Acts 2005, 79th Leg., Ch. 527 (H.B. 904), Sec. 2, eff. September 1, 2005.

## **TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY**

### **CHAPTER 6. CULPABILITY GENERALLY**

Sec. 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 law as defined by Section 1.07 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 3, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 3, Sec. 1, eff. Feb. 25, 1993;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b), 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), 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.

(f) An offense defined by municipal ordinance or by order of a county commissioners court may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 1219 (H.B. 970), Sec. 1, eff. September 1, 2005.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

## **CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER**

### **SUBCHAPTER A. COMPLICITY**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 4, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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) 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 5, eff. Sept.

1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY**

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2640, ch. 454, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY. (a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

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

(2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;

(3) a violation of a motor vehicle traffic ordinance of an

incorporated city or town in this state;

(4) a misdemeanor punishable by fine only;

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

(b) Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified 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 an offense described by Subsections (a)(1)-(5).

(c) No person may, in any case, be punished by death for an offense committed while the person was younger than 18 years.

(d) Notwithstanding Subsection (a), a person may not be prosecuted for or convicted of an offense described by Subsection (a)(4) or (5) that the person committed when younger than 10 years of age.

(e) A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing an offense described by Subsection (a)(4) or (5), other than an offense under a juvenile curfew ordinance or order. This presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the actor had sufficient capacity to understand that the conduct engaged in was wrong at the time the conduct was engaged in. The prosecution is not required to prove that the actor at the time of engaging in the conduct knew that the act was a criminal offense or knew the legal consequences of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, Sec. 24, eff.

Sept. 1, 1975; Acts 1987, 70th Leg., ch. 1040, Sec. 26, eff. Sept.

1, 1987; Acts 1989, 71st Leg., ch. 1245, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 169, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 77, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 165, Sec. 30.236, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 822, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1086, Sec. 42, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1297, Sec. 68, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 52, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 45, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 311 (H.B. 558), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 17, eff. September 1, 2013.

Sec. 8.08. CHILD WITH MENTAL ILLNESS, DISABILITY, OR LACK OF CAPACITY. (a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of an offense described by Section 8.07(a)(4) or (5) shall determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirement of the law.

(b) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

(d) In this section, "child" has the meaning assigned by Article 45.058(h), Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 18, eff. September 1, 2013.

**CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 9.01. DEFINITIONS. In this chapter:

- (1) "Custody" has the meaning assigned by Section 38.01.
- (2) "Escape" has the meaning assigned by Section 38.01.
- (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.
- (4) "Habitation" has the meaning assigned by Section 30.01.
- (5) "Vehicle" has the meaning assigned by Section 30.01.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 293, Sec. 1, eff. Sept. 1, 1997.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 1, eff. September 1, 2007.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER B. JUSTIFICATION GENERALLY**

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c), 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), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 proscribing 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

### SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(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);

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

(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; or

(5) if the actor sought an explanation from or discussion

with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02;  
or

(B) possessing or transporting a weapon in violation of Section 46.05.

(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.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 190, Sec. 1, eff. Sept. 1, 1995.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 2, eff. September 1, 2007.

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes

the deadly force is immediately necessary:

(A) to protect the actor 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.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 5316, ch. 977, Sec. 5, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 235, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 3, eff. September 1, 2007.

Sec. 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 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER D. PROTECTION OF PROPERTY**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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; 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 and 9.43 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 6, eff. Sept. 1, 1975. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER E. LAW ENFORCEMENT**

Sec. 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) 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) 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).

(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).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 correctional facility or a peace officer is justified in using any force, including deadly force, that he reasonably believes to be immediately necessary to prevent the escape of a person from the correctional facility.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.53. MAINTAINING SECURITY IN CORRECTIONAL FACILITY. An officer or employee of a correctional facility is justified in using force against a person in custody when and to the degree the officer or employee reasonably believes the force is necessary to maintain the security of the correctional facility, the safety or security of other persons in custody or employed by the correctional facility, or his own safety or security.

Added by Acts 1987, 70th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1987.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER F. SPECIAL RELATIONSHIPS**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

**TITLE 3. PUNISHMENTS**  
**CHAPTER 12. PUNISHMENTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 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.

(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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are designated as felonies or misdemeanors.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into five categories:

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

(b) An offense designated a felony in this code without specification as to category is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 2, Sec. 3, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS**

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000;
- (2) confinement in jail for a term not to exceed one year;

or

- (3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

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

or

- (3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS**

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for:

(1) life, if the individual committed the offense when younger than 18 years of age; or

(2) life without parole, if the individual committed the offense when 18 years of age or older.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which

the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the individual committed the offense when younger than 18 years of age; or

(2) a sentence of life imprisonment without parole is mandatory on conviction of the capital felony, if the individual committed the offense when 18 years of age or older.

Added by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 652, Sec. 12, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 838, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.145, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 765 (S.B. 839), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 2, Sec. 1, eff. July 22, 2013.

Sec. 12.32. FIRST DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice 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, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.31 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1058, ch. 488, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.146, eff. September 1, 2009.

Sec. 12.33. SECOND DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice 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, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.32 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.147, eff. September 1, 2009.

Sec. 12.34. THIRD DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice 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 \$10,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.33 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.01, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 25, Sec. 7, eff. June 18, 1990; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.148, eff. September 1, 2009.

Sec. 12.35. STATE JAIL FELONY PUNISHMENT. (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any

term of not more than two years or less than 180 days.

(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) under Section 20A.03 or 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.48, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 13, eff. September 1, 2011.

#### **SUBCHAPTER D. EXCEPTIONAL SENTENCES**

Sec. 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 imprisonment in the Texas Department of Criminal Justice or another 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.149, eff. September 1, 2009.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY. (a) Except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the first degree.

(c)(1) If it is shown on the trial of a felony of the first degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(2) Notwithstanding Subdivision (1), a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life if:

(A) the defendant is convicted of an offense:

(i) under Section 20A.02(a)(7) or (8), 21.11(a)(1), 22.021, or 22.011, Penal Code;

(ii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under Section 21.11, Penal Code; and

(B) the defendant has been previously convicted of an offense:

(i) under Section 43.25 or 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section;

(ii) under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(iii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or

(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

(3) Notwithstanding Subdivision (1) or (2), a defendant shall be punished for a capital felony if it is shown on the trial of an offense under Section 22.021 otherwise punishable under Subsection (f) of that section that the defendant has previously been finally convicted of:

(A) an offense under Section 22.021 that was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner described by Section 22.021(a)(2)(A); or

(B) an offense that was committed under the laws of another state that:

(i) contains elements that are substantially similar to the elements of an offense under Section 22.021; and

(ii) was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner substantially similar to a manner described by Section 22.021(a)(2)(A).

(4) Notwithstanding Subdivision (1) or (2), and except as provided by Subdivision (3) for the trial of an offense under Section

22.021 as described by that subdivision, a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under Section 20A.03 or of a sexually violent offense, committed by the defendant on or after the defendant's 18th birthday, that the defendant has previously been finally convicted of:

(A) an offense under Section 20A.03 or of a sexually violent offense; or

(B) an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under Section 20A.03 or of a sexually violent offense.

(5) A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under Subdivision (2).

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally 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 the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 6, eff. September 1, 2011.

(f) For the purposes of Subsections (a), (b), and (c)(1), an adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Juvenile Justice Department under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011, Family Code, is a final felony conviction.

(g) For the purposes of Subsection (c)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (c)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere

in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (c)(2)(B) is a conviction of an offense listed under Subsection (c)(2)(B).

(h) In this section, "sexually violent offense" means an offense:

(1) described by Article 62.001(6), Code of Criminal Procedure; and

(2) for which an affirmative finding has been entered under Article 42.015(b) or Section 5(e)(2), Article 42.12, Code of Criminal Procedure, for an offense other than an offense under Section 21.02 or 22.021.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 1750, ch. 339, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 582, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 250, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 262, Sec. 78, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 318, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 665, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 667, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 283, Sec. 53, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1005, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.15, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.150, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1119 (H.B. 3), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1119 (H.B. 3), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 16.003, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1323 (S.B. 511), Sec. 11, eff. December 1, 2013.

Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the third degree.

(b) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished for a felony of the second degree.

(c) If it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35(c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

Added by Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 5, eff. September 1, 2011.

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. (a) If it is 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:

- (1) a fine not to exceed \$4,000;
- (2) confinement in jail for any term of not more than one year or less than 90 days; or
- (3) both such fine and confinement.

(b) If it is 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:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for any term of not more than 180 days or less than 30 days; or
- (3) both such fine and confinement.

(c) If it is shown on the trial of an offense punishable as a Class C misdemeanor under Section 42.01 or 49.02 that the defendant has been before convicted under either of those sections three times or three times for any combination of those offenses and each prior offense was committed in the 24 months preceding the date of commission of the instant offense, the defendant shall be punished

by:

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

or

- (3) both such fine and confinement.

(d) If the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 564, Sec. 1, eff. Sept. 1, 1999.

Sec. 12.44. REDUCTION OF STATE JAIL FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT. (a) A court may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment 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 punishment would best serve the ends of justice.

(b) At the request of the prosecuting attorney, the court may authorize the prosecuting attorney to prosecute a state jail felony as a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.02, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 3, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1276 (H.B. [2296](#)), Sec. 1, eff. September 1, 2005.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 4131, ch. 649, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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.

Added by Acts 1979, 66th Leg., p. 1027, ch. 459, Sec. 1, eff. June 7, 1979. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.47. PENALTY IF OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. (a) If an affirmative finding under Article 42.014, Code of Criminal Procedure, is made in the trial of an offense other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. If the offense is a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. This section does not apply to the trial of an offense of injury to a disabled individual under Sec. 22.04, if the affirmative finding in the case under Article 42.014, Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled.

(b) The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense committed because of bias or prejudice. The attorney general shall designate one individual in the division of the attorney general's office that assists in the

prosecution of criminal cases to coordinate responses to requests made under this subsection.

Added by Acts 1993, 73rd Leg., ch. 987, Sec. 1, eff. Sept. 1, 1993.  
Amended by Acts 1997, 75th Leg., ch. 751, Sec. 1, eff. Sept. 1, 1997;  
Acts 2001, 77th Leg., ch. 85, Sec. 1.01, eff. Sept. 1, 2001.

Sec. 12.48. CERTAIN OFFENSES RESULTING IN LOSS TO NURSING AND CONVALESCENT HOMES. If it is shown on the trial of an offense under Chapter 31 or 32 that, as a result of a loss incurred because of the conduct charged, a trustee was appointed and emergency assistance funds, other than funds used to pay the expenses of the trustee, were used for a nursing or convalescent home under Subchapter D, Chapter 242, Health and Safety Code, the punishment for the offense is increased to the punishment prescribed for the next higher category of offense except that a felony of the first degree is punished as a felony of the first degree.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 4, eff. Sept. 1, 1999.

Sec. 12.49. PENALTY IF CONTROLLED SUBSTANCE USED TO COMMIT OFFENSE. If the court makes an affirmative finding under Article 42.012, Code of Criminal Procedure, in the punishment phase of the trial of an offense under Chapter 29, Chapter 31, or Title 5, other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. If the offense is a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days.

Added by Acts 1999, 76th Leg., ch. 417, Sec. 2(a), eff. Sept. 1, 1999. Renumbered from Penal Code Sec. 12.48 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(93), 21.002(15), eff. Sept. 1, 2001.

Sec. 12.50. PENALTY IF OFFENSE COMMITTED IN DISASTER AREA OR EVACUATED AREA. (a) Subject to Subsection (c), the punishment for an offense described by Subsection (b) is increased to the punishment

prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that was, at the time of the offense:

(1) subject to a declaration of a state of disaster made by:

(A) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(B) the governor under Section 418.014, Government Code; or

(C) the presiding officer of the governing body of a political subdivision under Section 418.108, Government Code; or

(2) subject to an emergency evacuation order.

(b) The increase in punishment authorized by this section applies only to an offense under:

(1) Section 22.01;

(2) Section 29.02;

(3) Section 30.02; and

(4) Section 31.03.

(c) If an offense listed under Subsection (b)(1) or (4) is punishable as a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. If an offense listed under Subsection (b)(3) or (4) is punishable as a felony of the first degree, the punishment for that offense may not be increased under this section.

(d) It is a defense to a charge under Subsection (b)(4) that the conduct in question meets the elements of necessity outlined in Section 9.22.

(e) For purposes of this section, "emergency evacuation order" means an official statement issued by the governing body of this state or a political subdivision of this state to recommend or require the evacuation of all or part of the population of an area stricken or threatened with a disaster.

Added by Acts 2009, 81st Leg., R.S., Ch. 731 (S.B. 359), Sec. 1, eff. September 1, 2009.

#### **SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS**

##### **Sec. 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;

(3) \$2,000 if the offense is a Class C misdemeanor; or

(4) \$50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

(c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4), if a court finds that the corporation or association gained money or property or caused personal injury or death, 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 or association to be lost or damaged, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation or association 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.

(e) On conviction of a corporation or association, the court shall notify the attorney general of that fact.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1977, 65th Leg., p. 1917, ch. 768, Sec. 1, eff. June 16, 1977; Acts 1987, 70th Leg., ch. 1085, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### TITLE 4. INCHOATE OFFENSES

**CHAPTER 15. PREPARATORY OFFENSES**

Sec. 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 state jail felony, the offense is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 478, ch. 203, Sec. 4, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 state jail felony, the offense is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 462, Sec. 1, eff. Sept. 1, 1993;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 15.031. CRIMINAL SOLICITATION OF A MINOR. (a) A person commits an offense if, with intent that an offense listed by Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, be committed, the person requests, commands, or attempts to induce a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense listed by Section 3g(a)(1), Article 42.12, or make the minor a party to the commission of an offense listed by Section 3g(a)(1), Article 42.12.

(b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, 43.02, 43.05(a)(2), or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

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

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

(1) the minor solicited is not criminally responsible for the offense solicited;

(2) the minor 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 offense solicited is legally incapable of committing the offense in an individual capacity; or

(4) the offense solicited was actually committed.

(e) An offense under this section is one category lower than

the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

(f) In this section, "minor" means an individual younger than 17 years of age.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 79, eff. Jan. 1, 1996.  
Amended by Acts 1999, 76th Leg., ch. 1415, Sec. 22(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.49, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.03, eff. September 1, 2011.

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 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 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

**CHAPTER 16. CRIMINAL INSTRUMENTS, INTERCEPTION OF WIRE OR ORAL COMMUNICATION, AND INSTALLATION OF TRACKING DEVICE**

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT OR MECHANICAL SECURITY DEVICE. (a) A person commits an offense if:

(1) the person possesses a criminal instrument or mechanical security device with the intent to use the instrument or device in the commission of an offense; or

(2) with knowledge of its character and with the intent to

use a criminal instrument or mechanical security device or aid or permit another to use the instrument or device in the commission of an offense, the person manufactures, adapts, sells, installs, or sets up the instrument or device.

(b) For the purpose of this section:

(1) "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.

(2) "Mechanical security device" means a device designed or manufactured for use by a locksmith to perform services for a customer who seeks entry to a structure, motor vehicle, or other property.

(c) An offense under Subsection (a)(1) is one category lower than the offense intended. An offense under Subsection (a)(2) is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 7, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 814 (H.B. [2577](#)), Sec. 1, eff. September 1, 2011.

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. (a) In this section, "computer trespasser," "covert entry," "communication common carrier," "contents," "electronic communication," "electronic, mechanical, or other device," "immediate life-threatening situation," "intercept," "investigative or law enforcement officer," "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations," "oral communication," "protected computer," "readily accessible to the general public," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

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

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

oral, or electronic communication;

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if the person knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

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

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

(5) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when the device:

(A) is affixed to, or otherwise transmits a signal through a wire, cable, or other connection used in wire communications; or

(B) transmits communications by radio or interferes with the transmission of communications by radio.

(c) It is an affirmative defense to prosecution under Subsection (b) 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 or electronic 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 section to intercept a wire, oral, or electronic communication;

(3) a person acting under color of law intercepts:

(A) a wire, oral, or electronic 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;

(B) a wire, oral, or electronic communication, if the person is acting under the authority of Article 18.20, Code of Criminal Procedure; or

(C) a wire or electronic communication made by a computer trespasser and transmitted to, through, or from a protected computer, if:

(i) the interception did not acquire a communication other than one transmitted to or from the computer trespasser;

(ii) the owner of the protected computer consented to the interception of the computer trespasser's communications on the protected computer; and

(iii) actor was lawfully engaged in an ongoing criminal investigation and the actor had reasonable suspicion to believe that the contents of the computer trespasser's communications likely to be obtained would be material to the investigation;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:

(A) the person is a party to the communication; or

(B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;

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

(A) oral or written consent for the interception is given by a magistrate before the interception;

(B) an immediate life-threatening situation exists;

(C) the person is a member of a law enforcement unit specially trained to:

(i) respond to and deal with life-threatening situations; or

(ii) install electronic, mechanical, or other devices; and

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

(6) an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by

radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;

(7) a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;

(8) a person intercepts radio communication, other than a cordless telephone communication that is transmitted between a cordless telephone handset and a base unit, that is transmitted:

(A) by a station for the use of the general public;

(B) to ships, aircraft, vehicles, or persons in distress;

(C) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public, unless the radio communication is transmitted by a law enforcement representative to or from a mobile data terminal;

(D) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(E) by a marine or aeronautical communications system;

(9) a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;

(10) a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or

(11) a provider of electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.

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

(1) intentionally manufactures, assembles, possesses, or sells an electronic, mechanical, or other device knowing or having

reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications and that the device or a component of the device has been or will be used for an unlawful purpose; or

(2) places in a newspaper, magazine, handbill, or other publication an advertisement of an electronic, mechanical, or other device:

(A) knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications;

(B) promoting the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications; or

(C) knowing or having reason to know that the advertisement will promote the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications.

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

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

(3) a member of the Department of Public Safety who is specifically trained to install wire, oral, or electronic communications intercept equipment; or

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

(e-1) It is a defense to prosecution under Subsection (d)(1) that the electronic, mechanical, or other device is possessed by a person authorized to possess the device under Section 500.008,

Government Code, or Section 242.103, Human Resources Code.

(f) An offense under this section is a felony of the second degree, unless the offense is committed under Subsection (d) or (g), in which event the offense is a state jail felony.

(g) A person commits an offense if, knowing that a government attorney or an investigative or law enforcement officer has been authorized or has applied for authorization to intercept wire, electronic, or oral communications, the person obstructs, impedes, prevents, gives notice to another of, or attempts to give notice to another of the interception.

(h) Repealed by Acts 2005, 79th Leg., Ch. 889, Sec. 1, eff. June 17, 2005.

Added by Acts 1981, 67th Leg., p. 738, ch. 275, Sec. 2, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4878, ch. 864, Sec. 1 to 3, eff. June 19, 1983; Acts 1989, 71st Leg., ch. 1166, Sec. 16, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 790, Sec. 16, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1270, Sec. 11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 678, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 889 (S.B. [1551](#)), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1169 (H.B. [3228](#)), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. [653](#)), Sec. 3.023, eff. September 1, 2011.

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. (a) A person commits an offense if the person knowingly installs or uses a pen register or trap and trace device to record or decode electronic or other impulses for the purpose of identifying telephone numbers dialed or otherwise transmitted on a telephone line.

(b) In this section, "authorized peace officer," "communications common carrier," "pen register," and "trap and trace device" have the meanings assigned by Article 18.21, Code of Criminal Procedure.

(c) It is an affirmative defense to prosecution under Subsection (a) that the actor is:

(1) an officer, employee, or agent of a communications common carrier and the actor installs or uses a device or equipment to record a number dialed from or to a telephone instrument in the normal course of business of the carrier for purposes of:

(A) protecting property or services provided by the carrier; or

(B) assisting another who the actor reasonably believes to be a peace officer authorized to install or use a pen register or trap and trace device under Article 18.21, Code of Criminal Procedure;

(2) an officer, employee, or agent of a lawful enterprise and the actor installs or uses a device or equipment while engaged in an activity that:

(A) is a necessary incident to the rendition of service or to the protection of property of or services provided by the enterprise; and

(B) is not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise; or

(3) a person authorized to install or use a pen register or trap and trace device under Article 18.21, Code of Criminal Procedure.

(d) An offense under this section is a state jail felony.

Added by Acts 1985, 69th Leg., ch. 587, Sec. 6, eff. Aug. 26, 1985.  
Amended by Acts 1989, 71st Leg., ch. 958, Sec. 2, eff. Sept. 1, 1989;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 1051, Sec. 10, eff. Sept. 1, 1997.

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. (a) In this section, "electronic communication," "electronic storage," "user," and "wire communication" have the meanings assigned to those terms in Article 18.21, Code of Criminal Procedure.

(b) A person commits an offense if the person obtains, alters, or prevents authorized access to a wire or electronic communication while the communication is in electronic storage by:

(1) intentionally obtaining access without authorization to a facility through which a wire or electronic communications service is provided; or

(2) intentionally exceeding an authorization for access to a facility through which a wire or electronic communications service is provided.

(c) Except as provided by Subsection (d), an offense under Subsection (b) is a Class A misdemeanor.

(d) If committed to obtain a benefit or to harm another, an offense is a state jail felony.

(e) It is an affirmative defense to prosecution under Subsection (b) that the conduct was authorized by:

(1) the provider of the wire or electronic communications service;

(2) the user of the wire or electronic communications service;

(3) the addressee or intended recipient of the wire or electronic communication; or

(4) Article 18.21, Code of Criminal Procedure.

Added by Acts 1989, 71st Leg., ch. 958, Sec. 3, eff. Sept. 1, 1989.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 11, eff. Sept. 1, 1997.

Sec. 16.05. ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS. (a) In this section, "electronic communication," "electronic communications service," and "electronic communications system" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

(b) A person who provides electronic communications service to the public commits an offense if the person knowingly divulges the contents of a communication to another who is not the intended recipient of the communication.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor divulged the contents of the communication:

(1) as authorized by federal or state law;

(2) to a person employed, authorized, or whose facilities are used to forward the communication to the communication's

destination; or

(3) to a law enforcement agency if the contents reasonably appear to pertain to the commission of a crime.

(d) Except as provided by Subsection (e), an offense under Subsection (b) that involves a scrambled or encrypted radio communication is a state jail felony.

(e) If committed for a tortious or illegal purpose or to gain a benefit, an offense under Subsection (b) that involves a radio communication that is not scrambled or encrypted:

(1) is a Class A misdemeanor if the communication is not a public land mobile radio service communication or a paging service communication; or

(2) is a Class C misdemeanor if the communication is a public land mobile radio service communication or a paging service communication.

(f) Repealed by Acts 1997, 75th Leg., ch. 1051, Sec. 13, eff. Sept. 1, 1997.

Added by Acts 1989, 71st Leg., ch. 1166, Sec. 17, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 16.04 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(24), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 12, 13, eff. Sept. 1, 1997.

Sec. 16.06. UNLAWFUL INSTALLATION OF TRACKING DEVICE. (a) In this section:

(1) "Electronic or mechanical tracking device" means a device capable of emitting an electronic frequency or other signal that may be used by a person to identify, monitor, or record the location of another person or object.

(2) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(b) A person commits an offense if the person knowingly installs an electronic or mechanical tracking device on a motor vehicle owned or leased by another person.

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

(d) It is an affirmative defense to prosecution under this section that the person:

(1) obtained the effective consent of the owner or lessee

of the motor vehicle before the electronic or mechanical tracking device was installed;

(2) assisted another whom the person reasonably believed to be a peace officer authorized to install the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency; or

(3) was a private investigator licensed under Chapter 1702, Occupations Code, who installed the device:

(A) with written consent:

(i) to install the device given by the owner or lessee of the motor vehicle; and

(ii) to enter private residential property, if that entry was necessary to install the device, given by the owner or lessee of the property; or

(B) pursuant to an order of or other authorization from a court to gather information.

(e) This section does not apply to a peace officer who installed the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 728, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.828, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1122 (H.B. 1659), Sec. 1, eff. September 1, 2009.

## **TITLE 5. OFFENSES AGAINST THE PERSON**

### **CHAPTER 19. CRIMINAL HOMICIDE**

Sec. 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, manslaughter, or criminally negligent homicide.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.02. MURDER. (a) In this section:

(1) "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.

(2) "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.

(b) 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 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.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.03. CAPITAL MURDER. (a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) 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, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(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;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under 10 years of age; or

(9) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

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

(c) If the jury or, when authorized by law, the judge 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.

Added by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5317, ch. 977, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 44, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 652, Sec. 13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 715, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 887, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 388, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 428 (S.B. 1791), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1209 (S.B. 377), Sec. 1, eff. September 1, 2011.

Sec. 19.04. MANSLAUGHTER. (a) A person commits an offense if he recklessly causes the death of an individual.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.04 by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1987. Renumbered from Penal Code Sec. 19.05 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.05. 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 state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.06 by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.06. APPLICABILITY TO CERTAIN CONDUCT. This chapter does not apply to the death of an unborn child if the conduct charged is:

- (1) conduct committed by the mother of the unborn child;
- (2) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure;
- (3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or
- (4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.02, eff. Sept. 1, 2003.

## **CHAPTER 20. KIDNAPPING, UNLAWFUL RESTRAINT, AND SMUGGLING OF PERSONS**

Sec. 20.01. DEFINITIONS. In this chapter:

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

- (A) force, intimidation, or deception; or
  - (B) any means, including acquiescence of the victim,
- if:

(i) the victim is a child who is 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; or

(ii) the victim is a child who is 14 years of age or older and younger than 17 years of age, the victim is taken outside of the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person or institution acting

in loco parentis has not acquiesced in the movement.

(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.

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

(5) Notwithstanding Section 1.07, "individual" means a human being who has been born and is alive.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 790, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 822, Sec. 2.03, eff. Sept. 1, 2003.

Sec. 20.02. UNLAWFUL RESTRAINT. (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 younger 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 A misdemeanor, except that the offense is:

(1) a state jail felony if the person restrained was a child younger than 17 years of age; or

(2) a felony of the third degree if:

(A) the actor recklessly exposes the victim to a substantial risk of serious bodily injury;

(B) the actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a public

servant; or

(C) the actor while in custody restrains any other person.

(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.

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

(1) the person restrained was a child who is 14 years of age or older and younger than 17 years of age;

(2) the actor does not restrain the child by force, intimidation, or deception; and

(3) the actor is not more than three years older than the child.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 707, Sec. 1(b), 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 790, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2001.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 4, eff. Sept. 1, 1995.

Sec. 20.05. SMUGGLING OF PERSONS. (a) A person commits an offense if the person intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:

- (1) conceal the individual from a peace officer or special investigator; or
- (2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor.

(b) Except as provided by Subsection (c), an offense under this section is a state jail felony.

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

- (1) for pecuniary benefit; or
- (2) in a manner that creates a substantial likelihood that

the transported individual will suffer serious bodily injury or death.

(d) It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(e) 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.

Added by Acts 1999, 76th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 223 (H.B. 260), Sec. 2, eff. September 1, 2011.

#### CHAPTER 20A. TRAFFICKING OF PERSONS

Sec. 20A.01. DEFINITIONS. In this chapter:

(1) "Child" means a person younger than 18 years of age.

(2) "Forced labor or services" means labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion.

(3) "Sexual conduct" has the meaning assigned by Section 43.25.

(4) "Traffic" means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.

Added by Acts 2003, 78th Leg., ch. 641, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 16.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 849 (H.B. 1121), Sec. 4, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.01, eff. September 1, 2011.

Sec. 20A.02. TRAFFICKING OF PERSONS. (a) A person commits an offense if the person knowingly:

(1) traffics another person with the intent that the

trafficked person engage in forced labor or services;

(2) receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A) Section 43.02 (Prostitution);

(B) Section 43.03 (Promotion of Prostitution);

(C) Section 43.04 (Aggravated Promotion of Prostitution); or

(D) Section 43.05 (Compelling Prostitution);

(4) receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5) traffics a child with the intent that the trafficked child engage in forced labor or services;

(6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that

involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

(b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time the actor commits the offense; or

(2) the commission of the offense results in the death of the person who is trafficked.

(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) If the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, a defendant may not be convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) unless the offense under Section 21.02:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).

Added by Acts 2003, 78th Leg., ch. 641, Sec. 2, eff. Sept. 1, 2003.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 16.02, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 849 (H.B. 1121), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.02, eff. September 1, 2011.

Sec. 20A.03. CONTINUOUS TRAFFICKING OF PERSONS. (a) A person commits an offense if, during a period that is 30 or more days in

duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.

(e) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 1, eff. September 1, 2011.

## **CHAPTER 21. SEXUAL OFFENSES**

Sec. 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, except as provided by Section

21.11, 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.

(4) "Spouse" means a person to whom a person is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 373, ch. 168, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 203, ch. 96, Sec. 3, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 739, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.124, eff. September 1, 2005.

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN.

(a) In this section, "child" has the meaning assigned by Section 22.011(c).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.

(c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

- (4) aggravated sexual assault under Section 22.021;
- (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);
- (6) sexual performance by a child under Section 43.25;
- (7) trafficking of persons under Section 20A.02(a)(7) or (8); and
- (8) compelling prostitution under Section 43.05(a)(2).

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

(e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):

- (1) is charged in the alternative;
- (2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or
- (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.

(g) It is an affirmative defense to prosecution under this section that the actor:

- (1) was not more than five years older than:
  - (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or
  - (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;
- (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and
- (3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

(h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.17, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.04, eff. September 1, 2011.

Section 21.06 was declared unconstitutional by *Lawrence v. Texas*, 123 S.Ct. 2472.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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:

(1) act of sexual intercourse;

(2) act of deviate sexual intercourse;

(3) act of sexual contact; or

(4) 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, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1983, 68th Leg., p. 509, ch. 924, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

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

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1981, 67th Leg., p. 472, ch. 202, Sec. 3, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 1028, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 739, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 1, eff. September 1, 2009.

#### Sec. 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT.

(a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;

(2) holds a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by Section 21.003(b), Education Code, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public primary or secondary school in

the same school district as the school at which the employee works;  
or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:

(i) students enrolled in a public or private primary or secondary school are the primary participants in the activity; and

(ii) the employee provides education services to those participants; or

(3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.

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

(b-1) It is an affirmative defense to prosecution under this section that:

(1) the actor was the spouse of the enrolled person at the time of the offense; or

(2) the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school.

(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 both sections.

(d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 224, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 610 (H.B. 401), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 772 (H.B. 3659), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 2, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 761 (H.B. 1610), Sec. 3, eff. September 1, 2011.

Sec. 21.15. IMPROPER PHOTOGRAPHY OR VISUAL RECORDING. (a) In this section, "promote" has the meaning assigned by Section 43.21.

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

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is not a bathroom or private dressing room:

(A) without the other person's consent; and

(B) with intent to arouse or gratify the sexual desire of any person;

(2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is a bathroom or private dressing room:

(A) without the other person's consent; and

(B) with intent to:

(i) invade the privacy of the other person; or

(ii) arouse or gratify the sexual desire of any

person; or

(3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

(c) An offense under this section is a state jail felony.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) For purposes of Subsection (b)(2), a sign or signs posted indicating that the person is being photographed or that a visual image of the person is being recorded, broadcast, or transmitted is not sufficient to establish the person's consent under that subdivision.

Added by Acts 2001, 77th Leg., ch. 458, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 500, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 306 (H.B. 1804), Sec. 1, eff.

September 1, 2007.

## CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 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;

(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) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(5) a person the actor knows is emergency services personnel while the person is providing emergency services.

(b-1) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

(e) In this section:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of Subsections (b)(2)(A) and (b-1)(2):

(1) a defendant has been previously convicted of an offense listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

(g) 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 both sections.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, Sec. 12, 13, eff. July 22, 1977; Acts 1979, 66th Leg., p. 260, ch. 135, Sec. 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 367, ch. 164, Sec. 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 5311, ch. 977, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 2.08,

eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 739, Sec. 1 to 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(23) to (26), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 334, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 366, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 27.01, eff. Sept. 1, 1997; Acts 1995, 74th Leg., ch. 318, Sec. 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 659, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 27.01, 31.01(68), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1158, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 294, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1019, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1028, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.002, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 623 (H.B. 495), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 623 (H.B. 495), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 427 (H.B. 2066), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 665 (H.B. 2240), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 875 (H.B. 705), Sec. 1, eff. September 1, 2013.

Sec. 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 sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, 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 sexual organ of a child by any means;

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

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

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

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

(b) A sexual assault under Subsection (a)(1) 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 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;

(7) 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;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 557, Sec. 1, eff.

Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1029, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 662, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 273, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1031, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1286, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1102, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1415, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.829, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 155, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 528, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 553, Sec. 2.017, eff. Feb. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.02, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 4, eff. September 1, 2009.

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if the person commits assault as defined in Sec. 22.01 and the person:

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

(2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) regardless of whether the offense is committed under Subsection (a)(1) or (a)(2), the offense is committed:

(A) by a public servant acting under color of the servant's office or employment;

(B) against a person the actor knows is a public

servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(C) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime; or

(D) against a person the actor knows is a security officer while the officer is performing a duty as a security officer; or

(3) the actor is in a motor vehicle, as defined by Section 501.002, Transportation Code, and:

(A) knowingly discharges a firearm at or in the direction of a habitation, building, or vehicle;

(B) is reckless as to whether the habitation, building, or vehicle is occupied; and

(C) in discharging the firearm, causes serious bodily injury to any person.

(c) The actor is presumed to have known the person assaulted was a public servant or a security officer if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer.

(d) In this section, "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
 Amended by Acts 1979, 66th Leg., p. 367, ch. 164, Sec. 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1521, ch. 655, Sec. 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 349, ch. 79, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5311, ch. 977, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 223, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 18, Sec. 3, eff. April 14, 1987; Acts 1987, 70th Leg., ch. 1101, Sec. 12, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 939, Sec. 1 to 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 334, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 903, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1019, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 594 (H.B. 176), Sec. 2, eff. September 1, 2009.

Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. (a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

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

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

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

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

(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

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

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

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

(f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:

(1) the victim of the offense is younger than six years of age at the time the offense is committed; or

(2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 16, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 7, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1286, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 417, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 459, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 528, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 896, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.18, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.05, eff. September 1, 2011.

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

- (1) serious bodily injury;
- (2) serious mental deficiency, impairment, or injury; or
- (3) bodily injury.

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

- (1) serious bodily injury;
- (2) serious mental deficiency, impairment, or injury; or
- (3) bodily injury.

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3) is conduct constituting an offense under this section if:

- (1) the actor has a legal or statutory duty to act; or
- (2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

- (1) "Child" means a person 14 years of age or younger.
- (2) "Elderly individual" means a person 65 years of age or older.

(3) "Disabled individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(4) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 620, Sec. 11, eff. September 1, 2011.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), or (3), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, and medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or (2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), or (3).

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under

either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); and

(2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or disabled individual that he would no longer provide any of the care described by Subsection (d); or

(3) notified in writing the Department of Protective and Regulatory Services that he would no longer provide any of the care set forth in Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k) It is a defense to prosecution under this section that the act or omission consisted of:

(1) reasonable medical care occurring under the direction of or by a licensed physician; or

(2) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

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

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to

report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a child at the time of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 365, ch. 162, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 472, ch. 202, Sec. 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2397, ch. 604, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 357, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 497, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.139, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(b), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.125(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 46, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 38, eff. June 11, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 11, eff. September 1, 2011.

Sec. 22.041. ABANDONING OR ENDANGERING CHILD. (a) In this section, "abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if:

(1) the person manufactured, possessed, or in any way introduced into the body of any person the controlled substance methamphetamine in the presence of the child;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child and an analysis of a specimen of the child's blood, urine, or other bodily substance indicates the presence of methamphetamine in the child's body; or

(3) the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1, Section 481.102, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) of that code.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

(1) a state jail felony if the actor abandoned the child with intent to return for the child; or

(2) a felony of the third degree if the actor abandoned the child without intent to return for the child.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of this section that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

Added by Acts 1985, 69th Leg., ch. 791, Sec. 1, eff. Sept. 1, 1985.  
Amended by Acts 1989, 71st Leg., ch. 904, Sec. 1, eff. Sept. 1, 1989;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 687, Sec. 1, eff. Sept. 1, 1997; Acts 1999,  
76th Leg., ch. 1087, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th  
Leg., ch. 809, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 10, eff. August 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 840 (H.B. 946), Sec. 2, eff. September 1, 2007.

Sec. 22.05. DEADLY CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:

(1) one or more individuals; or

(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

(c) 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.

(d) For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 30.01.

(e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. (a) 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 (Deadly Conduct) 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.

(b) The defense to prosecution provided by Subsection (a) is not available to a defendant who commits an offense described by Subsection (a) as a condition of the defendant's or the victim's initiation or continued membership in a criminal street gang, as defined by Section 71.01.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 273 (H.B. 184), Sec. 1, eff. September 1, 2007.

Sec. 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;
- (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;
- (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

(5) place the public or a substantial group of the public in fear of serious bodily injury; or

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) An offense under Subsection (a)(2) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense:

(1) is committed against a member of the person's family or household or otherwise constitutes family violence; or

(2) is committed against a public servant.

(d) An offense under Subsection (a)(3) is a Class A misdemeanor, unless the actor causes pecuniary loss of \$1,500 or more to the owner of the building, room, place, or conveyance, in which event the offense is a state jail felony.

(e) An offense under Subsection (a)(4), (a)(5), or (a)(6) is a felony of the third degree.

(f) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Household" has the meaning assigned by Section 71.005, Family Code.

(g) For purposes of Subsection (d), the amount of pecuniary loss is the amount of economic loss suffered by the owner of the building, room, place, or conveyance as a result of the prevention or interruption of the occupation or use of the building, room, place, or conveyance.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 2, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 139, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 388, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 446, Sec. 1, eff. Sept. 1, 2003.  
Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.003, eff. September 1, 2005.

Sec. 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 state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 431.002, Health and Safety Code.

(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) A person commits an offense if he knowingly or intentionally threatens to tamper with a consumer product with the intent to cause fear, to affect the sale of the consumer product, or to cause bodily injury to any person.

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

Added by Acts 1983, 68th Leg., p. 2812, ch. 481, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1989, 71st Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(32), eff.

Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.10. LEAVING A CHILD IN A VEHICLE. (a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

- (1) younger than seven years of age; and
- (2) not attended by an individual in the vehicle who is 14 years of age or older.

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

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 24, Sec. 1, eff. Oct. 2, 1984. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.11. HARASSMENT BY PERSONS IN CERTAIN CORRECTIONAL FACILITIES; HARASSMENT OF PUBLIC SERVANT. (a) A person commits an offense if, with the intent to assault, harass, or alarm, the person:

(1) while imprisoned or confined in a correctional or detention facility, causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal; or

(2) causes another person the actor knows to be a public servant to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant's official power or performance of an official duty.

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

(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.

(d) In this section, "correctional or detention facility" means:

- (1) a secure correctional facility; or
- (2) a "secure correctional facility" or a "secure detention

facility" as defined by Section 51.02, Family Code, operated by or under contract with a juvenile board or the Texas Youth Commission or any other facility operated by or under contract with that commission.

(e) For purposes of Subsection (a)(2), the actor is presumed to have known the person was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

Added by Acts 1999, 76th Leg., ch. 335, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 543 (H.B. 1095), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 543 (H.B. 1095), Sec. 2, eff. September 1, 2005.

Sec. 22.12. APPLICABILITY TO CERTAIN CONDUCT. This chapter does not apply to conduct charged as having been committed against an individual who is an unborn child if the conduct is:

- (1) committed by the mother of the unborn child;
- (2) a lawful medical procedure performed by a physician or other health care provider with the requisite consent;
- (3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or
- (4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.04, eff. Sept. 1, 2003.

## **TITLE 6. OFFENSES AGAINST THE FAMILY**

### **CHAPTER 25. OFFENSES AGAINST THE FAMILY**

Sec. 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) that the actor reasonably believed at the time of the commission of the offense that the actor and the person whom the actor married or purported to marry or with whom the actor lived under the appearance of being married were legally eligible to be married because the actor's prior marriage was void or had been dissolved by death, divorce, or annulment. For purposes of this subsection, an actor's belief is reasonable if the belief is substantiated by a certified copy of a death certificate or other signed document issued by a court.

(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, except that if at the time of the commission of the offense, the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is:

(1) 17 years of age, the offense is a felony of the second degree; or

(2) 16 years of age or younger, the offense is a felony of the first degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.03, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 4, eff. September 1, 2011.

Sec. 25.02. PROHIBITED SEXUAL CONDUCT. (a) A person commits an offense if the person engages in sexual intercourse or deviate sexual intercourse with another person the actor knows to be, without regard to legitimacy:

- (1) the actor's ancestor or descendant by blood or adoption;
- (2) the actor's current or former stepchild or stepparent;
- (3) the actor's parent's brother or sister of the whole or half blood;
- (4) the actor's brother or sister of the whole or half blood or by adoption;
- (5) the children of the actor's brother or sister of the whole or half blood or by adoption; or
- (6) the son or daughter of the actor's aunt or uncle 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, unless the offense is committed under Subsection (a)(1), in which event the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.04, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 673 (H.B. 2385), Sec. 1, eff.

September 1, 2009.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if the person takes or retains a child younger than 18 years of age:

(1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody;

(2) when the person has not been awarded custody of the child by a court of competent jurisdiction, 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, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child; or

(3) outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person.

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

(c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(c-1) It is an affirmative defense to prosecution under Subsection (a)(3) that:

(1) the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or

(2) notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control and the actor promptly provided notice or made

reasonable attempts to provide notice of those circumstances to the other person entitled to possession of or access to the child.

(c-2) Subsection (a)(3) does not apply if, at the time of the offense, the person taking or retaining the child:

(1) was entitled to possession of or access to the child; and

(2) was fleeing the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the person.

(d) An offense under this section is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 1111, ch. 527, Sec. 1, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 830, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 332, Sec. 1, eff. May 24, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 272 (H.B. 95), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 840 (H.B. 3439), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1100 (S.B. 1551), Sec. 3, eff. September 1, 2011.

Sec. 25.031. AGREEMENT TO ABDUCT FROM CUSTODY. (a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a court order, including a temporary order, or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order, including a temporary order.

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

Added by Acts 1987, 70th Leg., ch. 444, Sec. 3, eff. Sept. 1, 1987.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 272 (H.B. 95), Sec. 2, eff. September 1, 2007.

Sec. 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, unless it is shown on the trial of the offense that the actor intended to commit a felony against the child, in which event an offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 685, Sec. 7, eff. Sept. 1, 1999.

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for the actor's child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) An offense under this section is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 73, Sec. 13, eff. Nov.

1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 375, Sec. 1, eff. May 25, 2001.

Sec. 25.06. 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.

(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, as determined under Chapter 573, Government Code.

(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.

Added by Acts 1979, 66th Leg., p. 1155, ch. 558, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4750, ch. 831, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 561, Sec. 40, eff. Aug. 26, 1991. Renumbered from Sec. 25.07 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th

Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, OR STALKING CASE.

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, or stalking case and related to the safety of a victim or the safety of the community, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 22.011, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm; or

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order.

(a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:

(1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or

(2) constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

(b) For the purposes of this section:

(1) "Family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46.

(3) "Assistance animal" has the meaning assigned by Section 121.002, Human Resources Code.

(4) "Sexual abuse" means any act as described by Section 21.02 or 21.11.

(5) "Sexual assault" means any act as described by Section 22.011 or 22.021.

(6) "Stalking" means any conduct that constitutes an offense under Section 42.072.

(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) Reconciliatory actions or agreements made by persons affected by an order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 85.007, Family Code, or Article 17.292, Code of Criminal Procedure, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor, except the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant:

(1) has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or

(2) has violated the order or condition of bond by

committing an assault or the offense of stalking.

Added by Acts 1983, 68th Leg., p. 4049, ch. 631, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 583, Sec. 3, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 170, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 677, Sec. 8, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 614, Sec. 23 to 26, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 4 to 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 366, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 25.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 658, Sec. 2, 3, eff. June 14, 1995; Acts 1995, 74th Leg., ch. 660, Sec. 1, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1024, Sec. 23, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1, Sec. 2, eff. Jan. 28, 1997; Acts 1997, 75th Leg., ch. 1193, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(c), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 23, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 134, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 66 (S.B. [584](#)), Sec. 2, eff. May 11, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1113 (H.B. [3692](#)), Sec. 1, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1113 (H.B. [3692](#)), Sec. 2, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 19.001, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 136 (S.B. [279](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 136 (S.B. [279](#)), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. [743](#)), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 543 (S.B. [555](#)), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. [893](#)), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. [893](#)), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. [893](#)), Sec. 6, eff.

September 1, 2013.

Sec. 25.071. VIOLATION OF PROTECTIVE ORDER PREVENTING OFFENSE CAUSED BY BIAS OR PREJUDICE. (a) A person commits an offense if, in violation of an order issued under Article 6.08, Code of Criminal Procedure, the person knowingly or intentionally:

(1) commits an offense under Title 5 or Section 28.02, 28.03, or 28.08 and commits the offense because of bias or prejudice as described by Article 42.014, Code of Criminal Procedure;

(2) communicates:

(A) directly with a protected individual in a threatening or harassing manner;

(B) a threat through any person to a protected individual; or

(C) in any manner with the protected individual, if the order prohibits any communication with a protected individual; or

(3) goes to or near the residence or place of employment or business of a protected individual.

(b) 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.

(c) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(d) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times or has violated the protective order by committing an assault, in which event the offense is a third degree felony.

Added by Acts 2001, 77th Leg., ch. 85, Sec. 3.02, eff. Sept. 1, 2001.

Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE CASE. (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 25.07.

(b) If the jury is the trier of fact, members of the jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 25.07.

(c) A defendant may not be convicted in the same criminal action of another offense an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed in violation of a single court order or single setting of bond.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 1, eff. September 1, 2013.

Sec. 25.08. SALE OR PURCHASE OF CHILD. (a) A person commits an offense if he:

(1) possesses a child younger than 18 years of age or has the custody, conservatorship, or guardianship of a child younger than 18 years of age, 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 or reimbursement paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney, social worker, mental health

professional, or physician for services rendered in the usual course of legal or medical practice or in providing adoption counseling;

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child; or

(4) a necessary pregnancy-related expense paid by a child-placing agency for the benefit of the child's parent during the pregnancy or after the birth of the child as permitted by the minimum standards for child-placing agencies and Department of Protective and Regulatory Services rules.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.02, 43.05, or 43.25.

Added by Acts 1977, 65th Leg., p. 81, ch. 38, Sec. 1, eff. March 30, 1977. Amended by Acts 1981, 67th Leg., p. 2211, ch. 514, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 25.06 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(44). Renumbered from Sec. 25.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., ch. 134, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1005, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.01, eff. September 1, 2011.

Sec. 25.09. ADVERTISING FOR PLACEMENT OF CHILD. (a) A person commits an offense if the person advertises in the public media that the person will place a child for adoption or will provide or obtain a child for adoption.

(b) This section does not apply to a licensed child-placing agency that is identified in the advertisement as a licensed child-placing agency.

(c) An offense under this section is a Class A misdemeanor unless the person has been convicted previously under this section, in which event the offense is a felony of the third degree.

(d) In this section:

(1) "Child" has the meaning assigned by Section 101.003, Family Code.

(2) "Public media" has the meaning assigned by Section

38.01. The term also includes communications through the use of the Internet or another public computer network.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 31, eff. Sept. 1, 1997.

Sec. 25.10. INTERFERENCE WITH RIGHTS OF GUARDIAN OF THE PERSON.

(a) In this section:

(1) "Possessory right" means the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile, as provided by Section 767(1), Texas Probate Code.

(2) "Ward" has the meaning assigned by Section 601, Texas Probate Code.

(b) A person commits an offense if the person takes, retains, or conceals a ward when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the ward.

(c) An offense under this section is a state jail felony.

(d) This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 549, Sec. 32, eff. Sept. 1, 2003.

Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY. (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code.

(b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a) or the exact date when that conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that

constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

(c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim of the offense under Subsection (a) and an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

- (1) is charged in the alternative;
- (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
- (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed against a single victim or members of the same household, as defined by Section 71.005, Family Code.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 665 (H.B. 2240), Sec. 1, eff. September 1, 2009.

## TITLE 7. OFFENSES AGAINST PROPERTY

### CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 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.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 1, eff. Sept. 1, 1979; Acts 1989, 71st Leg., ch. 31, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.02. ARSON. (a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land;  
or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or destruction;

(C) knowing that it is subject to a mortgage or other security interest;

(D) knowing that it is located on property belonging to another;

(E) knowing that it has located within it property belonging to another; or

(F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or

attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(a-2) A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing:

(1) recklessly damages or destroys a building belonging to another; or

(2) recklessly causes another person to suffer bodily injury or death.

(b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) 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.

(d) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

(1) bodily injury or death was suffered by any person by reason of the commission of the offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) An offense under Subsection (a-2) is a state jail felony.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (a-2) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (a-2), under the other subsection of this section, or under the other section of this code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1837, ch. 425, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 31, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts

1997, 75th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 976, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 960 (H.B. 1634), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1168 (H.B. 3224), Sec. 1, eff. September 1, 2009.

Sec. 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;

(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; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$50; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$50 or more but less than \$500;

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is \$500 or more but less than \$1,500; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) \$1,500 or more but less than \$20,000;

(B) less than \$1,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(C) less than \$1,500, if the property was a fence used for the production or containment of:

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code; or

(D) less than \$20,000 and the actor causes wholly or partly impairment or interruption of public communications, public transportation, public gas or power supply, or other public service, or causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply;

(5) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power 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 terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the

amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(g) In this section:

(1) "Explosive weapon" means any explosive or incendiary device 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) an explosive or incendiary bomb, grenade, rocket, and mine;

(B) a device designed, made, or adapted for delivering or shooting an explosive weapon; and

(C) a device designed, made, or adapted to start a fire in a time-delayed manner.

(2) "Firearm" has the meaning assigned by Section 46.01.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) "Aluminum wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent aluminum, including any tubing or conduit attached to the wire or cable.

(5) "Bronze wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent bronze, including any tubing or conduit attached to the wire or cable.

(6) "Copper wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent copper, including any tubing or conduit attached to the wire or cable.

(7) "Transportation communications equipment" means:

(A) an official traffic-control device, railroad sign or signal, or traffic-control signal, as those terms are defined by Section 541.304, Transportation Code; or

(B) a sign, signal, or device erected by a railroad, public body, or public officer to direct the movement of a railroad train, as defined by Section 541.202, Transportation Code.

(8) "Transportation communications device" means any item attached to transportation communications equipment, including aluminum wiring, bronze wiring, and copper wiring.

(h) An offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is \$1,500 or more but less than \$20,000 and the damage or destruction is inflicted on a public or private elementary school, secondary school, or institution of higher education.

(i) Notwithstanding Subsection (b), an offense under this section is a felony of the first degree if the property is livestock and the damage is caused by introducing bovine spongiform encephalopathy, commonly known as mad cow disease, or a disease described by Section 161.041(a), Agriculture Code. In this subsection, "livestock" has the meaning assigned by Section 161.001, Agriculture Code.

(j) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if:

(1) the tangible property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device; and

(2) the amount of the pecuniary loss to the tangible property is less than \$100,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1981, 67th Leg., p. 66, ch. 29, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 559, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1253, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 42, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 11.280, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 747, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 976, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 690 (H.B. [1767](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 690 (H.B. 1767), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 638 (H.B. 1614), Sec. 1, eff. September 1, 2009.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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), the amount of loss is deemed to be greater than \$500 but less than \$1,500.

(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, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 2, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (a) In this section:

(1) "Railroad property" means:

(A) a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad; or

(B) a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.

(2) "Tamper" means to move, alter, or interfere with railroad property.

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

(1) throws an object or discharges a firearm or weapon at a train or rail-mounted work equipment; or

(2) without the effective consent of the owner:

(A) enters or remains on railroad property, knowing that it is railroad property;

(B) tampers with railroad property;

(C) places an obstruction on a railroad track or right-

of-way; or

(D) causes in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks.

(c) An offense under Subsection (b)(1) is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b)(2)(A) is a Class C misdemeanor.

(e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(3) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the amount of the pecuniary loss is \$200,000 or more.

(f) The conduct described in Subsection (b)(2)(A) is not an offense under this section if it is undertaken by an employee of the railroad or by a representative of a labor organization which represents or is seeking to represent the employees of the railroad as long as the employee or representative has a right to engage in such conduct under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Added by Acts 1989, 71st Leg., ch. 908, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.08. GRAFFITI. (a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

- (1) paint;
- (2) an indelible marker; or
- (3) an etching or engraving device.

(b) Except as provided by Subsection (d), an offense under this section is:

- (1) a Class B misdemeanor if the amount of pecuniary loss is less than \$500;
- (2) a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500;
- (3) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;
- (4) a felony of the third degree if the amount of pecuniary loss is \$20,000 or more but less than \$100,000;
- (5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or
- (6) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the offense.

(d) An offense under this section is a state jail felony if:

- (1) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; and
- (2) the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(e) In this section:

- (1) "Aerosol paint" means an aerosolized paint product.
- (2) "Etching or engraving device" means a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.
- (3) "Indelible marker" means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.
- (4) "Institution of higher education" has the meaning

assigned by Section 481.134, Health and Safety Code.

(5) "School" means a private or public elementary or secondary school.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 166, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 695, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 16.001, eff. Sept. 1, 2001.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 639 (H.B. 1633), Sec. 4, eff. September 1, 2009.

#### CHAPTER 29. ROBBERY

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02, and he:

- (1) causes serious bodily injury to another;
- (2) uses or exhibits a deadly weapon; or
- (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:
  - (A) 65 years of age or older; or
  - (B) a disabled person.

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

(c) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 357, Sec. 2, eff. Sept. 1, 1989;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

### **CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS**

Sec. 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, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, the person:

(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, theft, or an assault; or

(2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

(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), an offense under this section is a:

(1) state jail felony if committed in a building other than a habitation; or

(2) felony of the second degree if committed in a habitation.

(d) An offense under this section is a felony of the first degree if:

(1) the premises are a habitation; and

(2) any party to the offense entered the habitation with intent to commit a felony other than felony theft or committed or attempted to commit a felony other than felony theft.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 727, Sec. 1, eff. Sept. 1, 1999.

Sec. 30.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine, coin collection machine, or other coin-operated or coin collection receptacle, 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1987, 70th Leg., ch. 62, Sec. 1, eff. Sept. 1, 1987;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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) For purposes of this section, a container or trailer carried on a rail car is a part of the rail car.

(d) An offense under this section is a Class A misdemeanor, except that:

(1) the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section; and

(2) the offense is a state jail felony if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section; or

(B) the vehicle or part of the vehicle broken into or entered is a rail car.

(d-1) For the purposes of Subsection (d), a defendant has been previously convicted under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

(e) It is a defense to prosecution under this section that the

actor entered a rail car or any part of a rail car and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 916, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 308 (H.B. 1887), Sec. 1, eff. September 1, 2007.

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:

- (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.
- (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;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

(D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:

(i) vertical lines of not less than eight inches in length and not less than one inch in width;

(ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and

(iii) placed at locations that are readily visible to any person approaching the property and no more than:

(a) 100 feet apart on forest land; or

(b) 1,000 feet apart on land other than forest

land; or

(E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

(3) "Shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(4) "Forest land" means land on which the trees are potentially valuable for timber products.

(5) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(6) "Superfund site" means a facility that:

(A) is on the National Priorities List established under Section 105 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9605); or

(B) is listed on the state registry established under Section 361.181, Health and Safety Code.

(7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or

(J) a transmission facility used by a federally licensed radio or television station.

(8) "Protected freshwater area" has the meaning assigned by Section 90.001, Parks and Wildlife Code.

(9) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of

this state, negotiated an agreement after determining that the other state:

(A) has firearm proficiency requirements for peace officers; and

(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(10) "Recreational vehicle park" has the meaning assigned by Section 13.087, Water Code.

(11) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

(d) An offense under this section is:

(1) a Class B misdemeanor, except as provided by Subdivisions (2) and (3);

(2) a Class C misdemeanor, except as provided by Subdivision (3), if the offense is committed:

(A) on agricultural land and within 100 feet of the boundary of the land; or

(B) on residential land and within 100 feet of a protected freshwater area; and

(3) a Class A misdemeanor if:

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility;

or

(B) the person carries a deadly weapon during the commission of the offense.

(e) It is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a firefighter or emergency medical services personnel, as defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) a person who was:

(A) an employee or agent of:

(i) an electric utility, as defined by Section 31.002, Utilities Code;

(ii) a telecommunications provider, as defined by

Section 51.002, Utilities Code;

(iii) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code;

(iv) a gas utility, as defined by Section 101.003, Utilities Code, which for the purposes of this subsection includes a municipally owned utility as defined by that section;

(v) a gas utility, as defined by Section 121.001, Utilities Code;

(vi) a pipeline used for the transportation or sale of oil, gas, or related products; or

(vii) an electric cooperative or municipally owned utility, as defined by Section 11.003, Utilities Code; and

(B) performing a duty within the scope of that employment or agency; or

(3) a person who was:

(A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and

(B) performing a duty within the scope of that employment or agency.

(f) It is a defense to prosecution under this section that:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and

(2) the person was carrying a concealed handgun and a license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun.

(g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(A)(iii), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in

punishment provided by Subsection (d)(3)(A)(iii) does not apply.

(i) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2.122, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2385, ch. 596, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 139, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 308, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 24, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1229, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 161, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 169, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 765, Sec. 1, 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 16.002, 21.001(94), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1078, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1178, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14B.001, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1093 (H.B. [2110](#)), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1337 (S.B. [9](#)), Sec. 20, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1337 (S.B. [9](#)), Sec. 21, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 17.001(61), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 17.002(13), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.001, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 564 (S.B. 701), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. 3142), Sec. 12, eff. June 14, 2013.

Sec. 30.06. TRESPASS BY HOLDER OF LICENSE TO CARRY CONCEALED HANDGUN. (a) A license holder commits an offense if the license holder:

(1) carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that:

(A) entry on the property by a license holder with a concealed handgun was forbidden; or

(B) remaining on the property with a concealed handgun was forbidden and failed to depart.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.035(f).

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06,

Penal Code (trespass by holder of license to carry a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (concealed handgun law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

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

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03 or 46.035.

Added by Acts 1997, 75th Leg., ch. 1261, Sec. 23, eff. Sept. 1, 1997.  
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.24, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1178, Sec. 2, eff. Sept. 1, 2003.

### **CHAPTER 31. THEFT**

Sec. 31.01. DEFINITIONS. In this chapter:

(1) "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.

(2) "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.

(3) "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;

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

(E) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

(4) "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.

(5) "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.

(6) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, or transportation service;

(C) lodging, restaurant service, and entertainment;

and

(D) the supply of a motor vehicle or other property for use.

(7) "Steal" means to acquire property or service by theft.

(8) "Certificate of title" has the meaning assigned by Section 501.002, Transportation Code.

(9) "Used or secondhand motor vehicle" means a used motor vehicle, as that term is defined by Section 501.002, Transportation Code.

(10) "Elderly individual" has the meaning assigned by Section 22.04(c).

(11) "Retail merchandise" means one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment.

(12) "Retail theft detector" means an electrical, mechanical, electronic, or magnetic device used to prevent or detect shoplifting and includes any article or component part essential to the proper operation of the device.

(13) "Shielding or deactivation instrument" means any item or tool designed, made, or adapted for the purpose of preventing the detection of stolen merchandise by a retail theft detector. The term includes a metal-lined or foil-lined shopping bag and any item used to remove a security tag affixed to retail merchandise.

(14) "Fire exit alarm" has the meaning assigned by Section 793.001, Health and Safety Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 914, ch. 342, Sec. 9, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 901, Sec. 2, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.237, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 432, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. [2482](#)), Sec. 1, eff.

September 1, 2011.

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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;

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or

(3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

(c) For purposes of Subsection (b):

(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 the actor, is presumed

to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Chapter 501, Transportation Code) 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:

(A) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(B) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(C) 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 Subdivision (3)(A), "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual;

(5) stolen property does not lose its character as stolen when recovered by any law enforcement agency;

(6) an actor engaged in the business of obtaining abandoned or wrecked motor vehicles or parts of an abandoned or wrecked motor vehicle for resale, disposal, scrap, repair, rebuilding, demolition, or other form of salvage is presumed to know on receipt by the actor of stolen property that the property has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to maintain an accurate and legible inventory of each motor vehicle component part purchased by or delivered to the actor, including the date of purchase or delivery, the name, age, address, sex, and driver's license number of the seller or person making the delivery, the license plate number of the motor vehicle in which the part was delivered, a complete description of the part, and the vehicle identification number of the motor vehicle from which the part was removed, or in lieu of maintaining an inventory, fails to record the name and certificate of inventory number of the person who dismantled the motor vehicle from which the part was obtained;

(B) fails on receipt of a motor vehicle to obtain a certificate of authority, sales receipt, or transfer document as required by Chapter 683, Transportation Code, or a certificate of

title showing that the motor vehicle is not subject to a lien or that all recorded liens on the motor vehicle have been released; or

(C) fails on receipt of a motor vehicle to immediately remove an unexpired license plate from the motor vehicle, to keep the plate in a secure and locked place, or to maintain an inventory, on forms provided by the Texas Department of Motor Vehicles, of license plates kept under this paragraph, including for each plate or set of plates the license plate number and the make, motor number, and vehicle identification number of the motor vehicle from which the plate was removed;

(7) an actor who purchases or receives a used or secondhand motor vehicle is presumed to know on receipt by the actor of the motor vehicle that the motor vehicle has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to report to the Texas Department of Motor Vehicles the failure of the person who sold or delivered the motor vehicle to the actor to deliver to the actor a properly executed certificate of title to the motor vehicle at the time the motor vehicle was delivered; or

(B) fails to file with the county tax assessor-collector of the county in which the actor received the motor vehicle, not later than the 20th day after the date the actor received the motor vehicle, the registration license receipt and certificate of title or evidence of title delivered to the actor in accordance with Subchapter D, Chapter 520, Transportation Code, at the time the motor vehicle was delivered;

(8) an actor who purchases or receives from any source other than a licensed retailer or distributor of pesticides a restricted-use pesticide or a state-limited-use pesticide or a compound, mixture, or preparation containing a restricted-use or state-limited-use pesticide is presumed to know on receipt by the actor of the pesticide or compound, mixture, or preparation that the pesticide or compound, mixture, or preparation has been previously stolen from another if the actor:

(A) fails to record the name, address, and physical description of the seller or pledgor;

(B) fails to record a complete description of the amount and type of pesticide or compound, mixture, or preparation purchased or received; and

(C) fails to obtain a signed warranty from the seller

or pledgor that the seller or pledgor has the right to possess the property; and

(9) an actor who is subject to Section 409, Packers and Stockyards Act (7 U.S.C. Section 228b), that obtains livestock from a commission merchant by representing that the actor will make prompt payment is presumed to have induced the commission merchant's consent by deception if the actor fails to make full payment in accordance with Section 409, Packers and Stockyards Act (7 U.S.C. Section 228b).

(d) It is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense, but would not encourage a person not predisposed to commit the offense to actually commit the offense.

(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) \$50; or

(B) \$20 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(i) \$50 or more but less than \$500; or

(ii) \$20 or more but less than \$500 and the defendant obtained the property by issuing or passing a check or similar sight order in a manner described by Section 31.06;

(B) the value of the property stolen is less than:

(i) \$50 and the defendant has previously been convicted of any grade of theft; or

(ii) \$20, the defendant has previously been convicted of any grade of theft, and the defendant obtained the property by issuing or passing a check or similar sight order in a

manner described by Section 31.06; or

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if:

(A) the value of the property stolen is \$1,500 or more but less than \$20,000, or the property is less than 10 head of 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, including property that is a military grave marker;

(C) the property stolen is a firearm, as defined by Section 46.01;

(D) the value of the property stolen is less than \$1,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election; or

(F) the value of the property stolen is less than \$20,000 and the property stolen is:

(i) aluminum;

(ii) bronze;

(iii) copper; or

(iv) brass;

(5) a felony of the third degree if the value of the property stolen is \$20,000 or more but less than \$100,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than \$100,000; or

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than \$100,000;

(6) a felony of the second degree if:

(A) the value of the property stolen is \$100,000 or more but less than \$200,000; or

(B) the value of the property stolen is less than

\$200,000 and the property stolen is an automated teller machine or the contents or components of an automated teller machine; or

(7) a felony of the first degree if the value of the property stolen is \$200,000 or more.

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) 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 the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant;

(2) the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship;

(3) the owner of the property appropriated was at the time of the offense:

(A) an elderly individual; or

(B) a nonprofit organization;

(4) the actor was a Medicare provider in a contractual relationship with the federal government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship; or

(5) during the commission of the offense, the actor intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

(g) For the purposes of Subsection (a), a person is the owner of exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, only if the person qualifies to claim the animal under Section 142.0021, Agriculture Code, if the animal is an estray.

(h) In this section:

(1) "Restricted-use pesticide" means a pesticide classified as a restricted-use pesticide by the administrator of the Environmental Protection Agency under 7 U.S.C. Section 136a, as that law existed on January 1, 1995, and containing an active ingredient

listed in the federal regulations adopted under that law (40 C.F.R. Section 152.175) and in effect on that date.

(2) "State-limited-use pesticide" means a pesticide classified as a state-limited-use pesticide by the Department of Agriculture under Section 76.003, Agriculture Code, as that section existed on January 1, 1995, and containing an active ingredient listed in the rules adopted under that section (4 TAC Section 7.24) as that section existed on that date.

(3) "Nonprofit organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being described as an exempt organization by Section 501(c)(3) of that code.

(4) "Automated teller machine" means an unstaffed electronic information processing device that, at the request of a user, performs a financial transaction through the direct transmission of electronic impulses to a financial institution or through the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution. The term includes an automated banking machine.

(i) For purposes of Subsection (c)(9), "livestock" and "commission merchant" have the meanings assigned by Section 147.001, Agriculture Code.

(j) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 914, ch. 342, Sec. 10, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 937, ch. 349, Sec. 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 849, ch. 298, Sec. 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2065, ch. 455, Sec. 1, eff. June 11, 1981; Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3244, ch. 558, Sec. 11, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4523, ch. 741, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 599, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 901, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(45), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 245, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 724, Sec. 2, 3, eff. Sept. 1, 1989; Acts 1991, 72nd

Leg., ch. 14, Sec. 284(80), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 565, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 203, Sec. 4, 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 9, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 843, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.238, 31.01(69), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1153, Sec. 7.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1276, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.136, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 393, Sec. 20, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 304 (H.B. [1766](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 70 (H.B. [1282](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 105 (H.B. [1466](#)), Sec. 1, eff. May 23, 2009.

Acts 2009, 81st Leg., R.S., Ch. 139 (S.B. [1163](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 295 (H.B. [348](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 903 (H.B. [671](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 903 (H.B. [671](#)), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. [3097](#)), Sec. 3J.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 120 (S.B. [887](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 120 (S.B. [887](#)), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. [2482](#)), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. [694](#)), Sec. 21, eff. September 1, 2011.

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation:

- (1) the actor 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 the actor is not entitled, the actor intentionally or knowingly diverts the other's services to the actor's own benefit or to the benefit of another not entitled to the services;
- (3) having control of personal property under a written rental agreement, the actor 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; or
- (4) the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.

(b) For purposes of this section, intent to avoid payment is presumed if:

- (1) the actor absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;
- (2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;
- (3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; or
- (4) the actor failed to return the property held under a rental agreement:
  - (A) within five days after receiving notice demanding return, if the property is valued at less than \$1,500; or
  - (B) within three days after receiving notice demanding return, if the property is valued at \$1,500 or more.

(c) For purposes of Subsections (a)(4), (b)(2), and (b)(4), 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 or service agreement.

(d) If written notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

(d-1) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; and

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.

(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 \$500;

(3) a Class A misdemeanor if the value of the service stolen is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the service stolen is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the service stolen is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the service stolen is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the service stolen is \$200,000 or more.

(f) Notwithstanding any other provision of this code, any police or other report of stolen vehicles by a political subdivision of this state shall include on the report any rental vehicles whose renters have been shown to such reporting agency to be in violation of Subsection (b)(2) and shall indicate that the renting agency has complied with the notice requirements demanding return as provided in this section.

(g) It is a defense to prosecution under this section that:

(1) the defendant secured the performance of the service by giving a post-dated check or similar sight order to the person performing the service; and

(2) the person performing the service or any other person presented the check or sight order for payment before the date on the

check or sight order.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1977, 65th Leg., p. 1138, ch. 429, Sec. 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2920, ch. 497, Sec. 4, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 565, Sec. 15, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 479, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 843, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1245, Sec. 1, 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 419, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 141 (S.B. [1024](#)), Sec. 1, eff. September 1, 2011.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK OR SIMILAR SIGHT ORDER. (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, it is prima facie evidence of the issuer's intent to deprive the owner of property under Section 31.03 (Theft) including a drawee or third-party holder in due course who negotiated the check or order or to avoid payment for service under Section 31.04 (Theft of Service) (except in the case of a postdated check or order) if:

(1) the issuer had no account with the bank or other drawee at the time the issuer issued the check or sight 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) or (f)(3), notice may be actual notice or notice in writing that:

(1) is sent by:

(A) first class mail, evidenced by an affidavit of service; or

(B) registered or certified mail with return receipt requested;

(2) is addressed to the issuer at the issuer's address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing

an offense, and this matter may be referred for criminal prosecution."

(c) If written notice is given in accordance with Subsection (b), 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.

(e) Partial restitution does not preclude the presumption of the requisite intent under this section.

(f) If the actor obtained property by issuing or passing a check or similar sight order for the payment of money, the actor's intent to deprive the owner of the property under Section 31.03 (Theft) is presumed, except in the case of a postdated check or order, if:

(1) the actor ordered the bank or other drawee to stop payment on the check or order;

(2) the bank or drawee refused payment to the holder on presentation of the check or order within 30 days after issue;

(3) the owner gave the actor notice of the refusal of payment and made a demand to the actor for payment or return of the property; and

(4) the actor failed to:

(A) pay the holder within 10 days after receiving the demand for payment; or

(B) return the property to the owner within 10 days after receiving the demand for return of the property.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 543, Sec. 2, eff. Sept. 1, 1991;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 753, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 976 (S.B. 548), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 2, eff. September 1, 2013.

Sec. 31.07. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally 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 state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.08. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c), 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), the property or service is deemed to have a value of \$500 or more but less than \$1,500.

(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) to determine value for purposes of this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1983, 68th Leg., p. 2920, ch. 497, Sec. 5, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.11. TAMPERING WITH IDENTIFICATION NUMBERS. (a) A person commits an offense if the person:

(1) knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property; or

(2) possesses, sells, or offers for sale tangible personal property and:

(A) the actor knows that the serial number or other permanent identification marking has been removed, altered, or obliterated; or

(B) a reasonable person in the position of the actor would have known that the serial number or other permanent identification marking has been removed, altered, or obliterated.

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

(1) the owner or acting with the effective consent of the owner of the property involved;

(2) a peace officer acting in the actual discharge of

official duties; or

(3) acting with respect to a number assigned to a vehicle by the Texas Department of Transportation or the Texas Department of Motor Vehicles, as applicable, and the person was:

(A) in the actual discharge of official duties as an employee or agent of the department; or

(B) in full compliance with the rules of the department as an applicant for an assigned number approved by the department.

(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 this section is a Class A misdemeanor.

(e) In this section, "vehicle" has the meaning given by Section 541.201, Transportation Code.

Added by Acts 1979, 66th Leg., p. 417, ch. 191, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4525, ch. 741, Sec. 2, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 113, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.239, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3J.02, eff. September 1, 2009.

Sec. 31.12. THEFT OF OR TAMPERING WITH MULTICHANNEL VIDEO OR INFORMATION SERVICES. (a) A person commits an offense if, without the authorization of the multichannel video or information services provider, the person intentionally or knowingly:

(1) makes or maintains a connection, whether physically, electrically, electronically, or inductively, to:

(A) a cable, wire, or other component of or media attached to a multichannel video or information services system; or

(B) a television set, videotape recorder, or other receiver attached to a multichannel video or information system;

(2) attaches, causes to be attached, or maintains the attachment of a device to:

(A) a cable, wire, or other component of or media attached to a multichannel video or information services system; or

(B) a television set, videotape recorder, or other receiver attached to a multichannel video or information services system;

(3) tampers with, modifies, or maintains a modification to a device installed by a multichannel video or information services provider; or

(4) tampers with, modifies, or maintains a modification to an access device or uses that access device or any unauthorized access device to obtain services from a multichannel video or information services provider.

(b) In this section:

(1) "Access device," "connection," and "device" mean an access device, connection, or device wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried by a multichannel video or information services provider.

(2) "Encrypted, encoded, scrambled, or other nonstandard signal" means any type of signal or transmission not intended to produce an intelligible program or service without the use of a device, signal, or information provided by a multichannel video or information services provider.

(3) "Multichannel video or information services provider" means a licensed cable television system, video dialtone system, multichannel multipoint distribution services system, direct broadcast satellite system, or other system providing video or information services that are distributed by cable, wire, radio frequency, or other media.

(c) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

(d) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the actor:

(1) has been previously convicted one time of an offense under this section, in which event the offense is a Class B misdemeanor, or convicted two or more times of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) committed the offense for remuneration, in which event the offense is a Class A misdemeanor, unless it is also shown on the trial of the offense that the actor has been previously convicted two or more times of an offense under this section, in which event the

offense is a Class A misdemeanor with a minimum fine of \$2,000 and a minimum term of confinement of 180 days.

(e) For the purposes of this section, each connection, attachment, modification, or act of tampering is a separate offense.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 10, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 858, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.13. MANUFACTURE, DISTRIBUTION, OR ADVERTISEMENT OF MULTICHANNEL VIDEO OR INFORMATION SERVICES DEVICE. (a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, assembles, modifies, imports into the state, exports out of the state, distributes, advertises, or offers for sale, with an intent to aid in the commission of an offense under Section 31.12, a device, a kit or part for a device, or a plan for a system of components wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried or caused by a multichannel video or information services provider.

(b) In this section, "device," "encrypted, encoded, scrambled, or other nonstandard signal," and "multichannel video or information services provider" have the meanings assigned by Section 31.12.

(c) This section does not prohibit the manufacture, distribution, advertisement, offer for sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

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

Added by Acts 1995, 74th Leg., ch. 318, Sec. 10, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 858, Sec. 2, eff. Sept. 1, 1999.

Sec. 31.14. SALE OR LEASE OF MULTICHANNEL VIDEO OR INFORMATION SERVICES DEVICE. (a) A person commits an offense if the person intentionally or knowingly sells or leases, with an intent to aid in the commission of an offense under Section 31.12, a device, a kit or part for a device, or a plan for a system of components wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried or caused by a multichannel video or information services provider.

(b) In this section, "device," "encrypted, encoded, scrambled,

or other nonstandard signal," and "multichannel video or information services provider" have the meanings assigned by Section 31.12.

(c) This section does not prohibit the sale or lease of satellite receiving antennas that are otherwise permitted by state or federal law without providing notice to the comptroller.

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

Added by Acts 1999, 76th Leg., ch. 858, Sec. 3, eff. Sept. 1, 1999.

Sec. 31.15. POSSESSION, MANUFACTURE, OR DISTRIBUTION OF CERTAIN INSTRUMENTS USED TO COMMIT RETAIL THEFT. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4, eff. September 1, 2011.

(b) A person commits an offense if, with the intent to use the instrument to commit theft, the person:

- (1) possesses a shielding or deactivation instrument; or
- (2) knowingly manufactures, sells, offers for sale, or otherwise distributes a shielding or deactivation instrument.

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

Added by Acts 2001, 77th Leg., ch. 109, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. [2482](#)), Sec. 4, eff. September 1, 2011.

Sec. 31.16. ORGANIZED RETAIL THEFT. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4, eff. September 1, 2011.

(b) A person commits an offense if the person intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, or disposes of:

- (1) stolen retail merchandise; or
- (2) merchandise explicitly represented to the person as being stolen retail merchandise.

(c) An offense under this section is:

- (1) a Class B misdemeanor if the total value of the merchandise involved in the activity is less than \$50;
- (2) a Class A misdemeanor if the total value of the merchandise involved in the activity is \$50 or more but less than \$500;

(3) a state jail felony if the total value of the merchandise involved in the activity is \$500 or more but less than \$1,500;

(4) a felony of the third degree if the total value of the merchandise involved in the activity is \$1,500 or more but less than \$20,000;

(5) a felony of the second degree if the total value of the merchandise involved in the activity is \$20,000 or more but less than \$100,000; or

(6) a felony of the first degree if the total value of the merchandise involved in the activity is \$100,000 or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(5) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b); or

(2) during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4, eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1274 (H.B. [3584](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. [2482](#)), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. [2482](#)), Sec. 4, eff. September 1, 2011.

Sec. 31.17. UNAUTHORIZED ACQUISITION OR TRANSFER OF CERTAIN

FINANCIAL INFORMATION. (a) In this section:

(1) "Check" has the meaning assigned by Section 3.104, Business & Commerce Code.

(2) "Credit card" and "debit card" have the meanings assigned by Section 32.31.

(3) "Financial sight order or payment card information" means financial information that is:

(A) contained on either side of a check or similar sight order, check card, debit card, or credit card; or

(B) encoded on the magnetic strip or stripe of a check card, debit card, or credit card.

(b) A person commits an offense if the person, knowing that the person is not entitled to obtain or possess that financial information:

(1) obtains the financial sight order or payment card information of another by use of an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial sight order or payment card information; or

(2) transfers to a third party information obtained as described by Subdivision (1).

(c) An offense under Subsection (b)(1) is a Class B misdemeanor. An offense under Subsection (b)(2) is a Class A misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 260 (H.B. [1215](#)), Sec. 1, eff. September 1, 2011.

## CHAPTER 32. FRAUD

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, savings 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c), 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), the property or service is deemed to have a value of \$500 or more but

less than \$1,500.

(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) to determine value for purposes of this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER B. FORGERY**

Sec. 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); 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).

(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 by Subsections (d), (e), and (e-1), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, 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 third degree if the writing is or purports to be:

- (1) part of an issue of money, securities, postage or revenue stamps;
- (2) a government record listed in Section 37.01(2)(C); or
- (3) 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.

(e-1) An offense under this section is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(2)(C).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1991, 72nd Leg., ch. 113, Sec. 2, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 189, Sec. 1, eff. May 21, 1997; Acts 2003, 78th  
Leg., ch. 1104, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 1, eff. September 1, 2009.

Sec. 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 possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(3) 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.23. TRADEMARK COUNTERFEITING. (a) In this section:

(1) "Counterfeit mark" means a mark that is identical to or substantially indistinguishable from a protected mark the use or production of which is not authorized by the owner of the protected mark.

(2) "Identification mark" means a data plate, serial number, or part identification number.

(3) "Protected mark" means a trademark or service mark or an identification mark that is:

(A) registered with the secretary of state;

(B) registered on the principal register of the United States Patent and Trademark Office;

(C) registered under the laws of another state; or

(D) protected by Section 16.105, Business & Commerce Code, or by 36 U.S.C. Section 371 et seq.

(4) "Retail value" means the actor's regular selling price for a counterfeit mark or an item or service that bears or is identified by a counterfeit mark, except that if an item bearing a counterfeit mark is a component of a finished product, the retail

value means the actor's regular selling price of the finished product on or in which the component is used, distributed, or sold.

(5) "Service mark" has the meaning assigned by Section 16.001, Business & Commerce Code.

(6) "Trademark" has the meaning assigned by Section 16.001, Business & Commerce Code.

(b) A person commits an offense if the person intentionally manufactures, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute a counterfeit mark or an item or service that:

(1) bears or is identified by a counterfeit mark; or

(2) the person knows or should have known bears or is identified by a counterfeit mark.

(c) A state or federal certificate of registration of intellectual property is prima facie evidence of the facts stated in the certificate.

(d) For the purposes of Subsection (e), when items or services are the subject of counterfeiting in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the retail value of the items or services aggregated in determining the grade of offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the retail value of the item or service is less than \$20;

(2) Class B misdemeanor if the retail value of the item or service is \$20 or more but less than \$500;

(3) Class A misdemeanor if the retail value of the item or service is \$500 or more but less than \$1,500;

(4) state jail felony if the retail value of the item or service is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the retail value of the item or service is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the retail value of the item or service is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the retail value of the item or service is \$200,000 or more.

Added by Acts 1997, 75th Leg., ch. 1161, Sec. 2, eff. Sept. 1, 1997.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. [3141](#)), Sec. 2, eff.

September 1, 2012.

Sec. 32.24. STEALING OR RECEIVING STOLEN CHECK OR SIMILAR SIGHT ORDER. (a) A person commits an offense if the person steals an unsigned check or similar sight order or, with knowledge that an unsigned check or similar sight order has been stolen, receives the check or sight order with intent to use it, to sell it, or to transfer it to a person other than the person from whom the check or sight order was stolen.

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

Added by Acts 1999, 76th Leg., ch. 1413, Sec. 1, eff. Sept. 1, 1999.

#### **SUBCHAPTER C. CREDIT**

Sec. 32.31. CREDIT CARD OR DEBIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card or debit card to whom or for whose benefit the 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. The term 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.

(4) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal or obtain property or services by debit to an account at a financial institution. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.

(5) "Expired debit card" means a debit card bearing as its expiration date a date that has passed.

(6) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated by a customer, by which a

customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account under a line of credit previously authorized by the institution for the customer.

(7) "Customer convenience terminal" means an unmanned teller machine the use of which does not involve personnel of a financial institution.

(b) A person commits an offense if:

(1) with intent to obtain a benefit fraudulently, he presents or uses a credit card or debit 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 a benefit, he uses a fictitious credit card or debit card or the pretended number or description of a fictitious card;

(3) he receives a benefit that he knows has been obtained in violation of this section;

(4) he steals a credit card or debit card or, with knowledge that it has been stolen, receives a credit card or debit 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 or debit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card or debit card;

(7) he uses or induces the cardholder to use the cardholder's credit card or debit 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 possesses a credit card or debit card with intent to use it;

(9) he possesses two or more incomplete credit cards or debit 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 card is incomplete if part of the matter that an issuer requires to appear on the 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 or debit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card or debit card obtained or retained in violation of this section or a credit card or debit 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 or debit 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 or debit 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 state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1104, Sec. 2, 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1054 (H.B. 1323), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 2, eff. September 1, 2009.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT OR IN

THE PROVISION OF CERTAIN SERVICES. (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;
- (6) a credit card, as defined in Section 32.31 (Credit Card or Debit Card Abuse); and
- (7) a mortgage loan.

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit, including a mortgage loan.

(b-1) A person commits an offense if the person intentionally or knowingly makes a materially false or misleading written statement in providing an appraisal of real property for compensation.

(c) An offense under this section is:

- (1) a Class C misdemeanor if the value of the property or the amount of credit is less than \$50;
- (2) a Class B misdemeanor if the value of the property or the amount of credit is \$50 or more but less than \$500;
- (3) a Class A misdemeanor if the value of the property or the amount of credit is \$500 or more but less than \$1,500;
- (4) a state jail felony if the value of the property or the amount of credit is \$1,500 or more but less than \$20,000;
- (5) a felony of the third degree if the value of the property or the amount of credit is \$20,000 or more but less than \$100,000;
- (6) a felony of the second degree if the value of the property or the amount of credit is \$100,000 or more but less than \$200,000; or
- (7) a felony of the first degree if the value of the property or the amount of credit is \$200,000 or more.

(d) The following agencies shall assist a prosecuting attorney of the United States or of a county or judicial district of this state, a county or state law enforcement agency of this state, or a federal law enforcement agency in the investigation of an offense under this section involving a mortgage loan:

- (1) the office of the attorney general;

- (2) the Department of Public Safety;
- (3) the Texas Department of Insurance;
- (4) the Office of Consumer Credit Commissioner;
- (5) the Texas Department of Banking;
- (6) the credit union department;
- (7) the Department of Savings and Mortgage Lending;
- (8) the Texas Real Estate Commission;
- (9) the Texas Appraiser Licensing and Certification Board;

and

- (10) the Texas Department of Housing and Community Affairs.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves a mortgage loan.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.50, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1245, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 285 (H.B. 716), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 709 (H.B. 2840), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 709 (H.B. 2840), Sec. 5, eff. September 1, 2009.

Sec. 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) An offense under Subsection (b) is a:

(1) Class C misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is less than \$20;

(2) Class B misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$200,000 or more.

(e) A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person sells or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, with intent to appropriate (as defined in Chapter 31) the proceeds or value of the secured property. A person is presumed to have intended to appropriate proceeds if the person does not deliver

the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:

(1) a Class C misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of less than \$20;

(2) a Class B misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20 or more but less than \$500;

(3) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$500 or more but less than \$1,500;

(4) a state jail felony if the proceeds obtained from the sale or other disposition are money or goods having a value of \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$200,000 or more.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 501, ch. 232, Sec. 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 914, Sec. 5, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.34. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. (a) In this section:

(1) "Lease" means the grant of use and possession of a motor vehicle for consideration, whether or not the grant includes an option to buy the vehicle.

(2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

(3) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(4) "Third party" means a person other than the actor or the owner of the vehicle.

(5) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of a sale, lease, sublease, lease assignment, or other property transfer.

(b) A person commits an offense if the person acquires, accepts possession of, or exercises control over the motor vehicle of another under a written or oral agreement to arrange for the transfer of the vehicle to a third party and:

(1) knowing the vehicle is subject to a security interest, lease, or lien, the person transfers the vehicle to a third party without first obtaining written authorization from the vehicle's secured creditor, lessor, or lienholder;

(2) intending to defraud or harm the vehicle's owner, the person transfers the vehicle to a third party;

(3) intending to defraud or harm the vehicle's owner, the person disposes of the vehicle in a manner other than by transfer to a third party; or

(4) the person does not disclose the location of the vehicle on the request of the vehicle's owner, secured creditor, lessor, or lienholder.

(c) For the purposes of Subsection (b)(2), the actor is presumed to have intended to defraud or harm the motor vehicle's owner if the actor does not take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

(d) It is a defense to prosecution under Subsection (b)(1) that the entire indebtedness secured by or owed under the security interest, lease, or lien is paid or satisfied in full not later than the 30th day after the date that the transfer was made.

(e) It is not a defense to prosecution under Subsection (b)(1) that the motor vehicle's owner has violated a contract creating a security interest, lease, or lien in the motor vehicle.

(f) An offense under Subsection (b)(1), (b)(2), or (b)(3) is:

(1) a state jail felony if the value of the motor vehicle is less than \$20,000; or

(2) a felony of the third degree if the value of the motor

vehicle is \$20,000 or more.

(g) An offense under Subsection (b)(4) is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 954, Sec. 1, eff. Sept. 1, 1989.  
Renumbered from Penal Code, Sec. 32.36 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.35. CREDIT CARD TRANSACTION RECORD LAUNDERING. (a) In this section:

(1) "Agent" means a person authorized to act on behalf of another and includes an employee.

(2) "Authorized vendor" means a person authorized by a creditor to furnish property, service, or anything else of value upon presentation of a credit card by a cardholder.

(3) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued, and includes the named person's agents.

(4) "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 on the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(5) "Creditor" means a person licensed under Chapter 342, Finance Code, a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

(b) A person commits an offense if the person is an authorized vendor who, with intent to defraud the creditor or cardholder, presents to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(c) A person commits an offense if, without the creditor's authorization, the person employs, solicits, or otherwise causes an authorized vendor or the vendor's agent to present to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(d) It is presumed that a person is not the agent of an authorized vendor if a fee is paid or offered to be paid by the person to the authorized vendor in connection with the vendor's presentment to a creditor of a credit card transaction record.

(e) An offense under this section is a:

(1) Class C misdemeanor if the amount of the record of a sale is less than \$20;

(2) Class B misdemeanor if the amount of the record of a sale is \$20 or more but less than \$500;

(3) Class A misdemeanor if the amount of the record of a sale is \$500 or more but less than \$1,500;

(4) state jail felony if the amount of the record of a sale is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the amount of the record of a sale is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the amount of the record of a sale is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the amount of the record of a sale is \$200,000 or more.

Added by Acts 1991, 72nd Leg., ch. 792, Sec. 1, eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 32.37 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 38, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.83, eff. Sept. 1, 1999.

#### **SUBCHAPTER D. OTHER DECEPTIVE PRACTICES**

Sec. 32.41. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER. (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) may be actual notice or notice in writing that:

(1) is sent by:

(A) first class mail, evidenced by an affidavit of service; or

(B) registered or certified mail with return receipt requested;

(2) is addressed to the issuer at the issuer's address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(d) If notice is given in accordance with Subsection (c), 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 or sight orders. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may be, with the approval of the court in which the offense is filed:

(1) made through the court; or

(2) collected by a law enforcement agency if a peace officer of that agency executes a warrant against the person charged with the offense.

(f) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. If the check or similar

sight order that was issued or passed was for a child support payment the obligation for which is established under a court order, the offense is a Class B misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5050, ch. 911, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 687, Sec. 2, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 1038, Sec. 1, eff. June 16, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 753, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 702, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 976 (S.B. 548), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1393 (H.B. 485), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 4, eff. September 1, 2013.

Sec. 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) 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, Sec. 1, eff. Jan. 1, 1974.  
 Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, Sec. 1, 2, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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).

(d) An offense under this section is a state jail felony.

(e) In lieu of a fine that is authorized by Subsection (d), 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), 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) to an offense under this section committed by a corporation or association.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 1942, ch. 357, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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).

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. (a) A person commits an offense if, without the consent of the governing body or a designee of the governing body of an institution of higher education, the person intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another on an agreement or understanding that the benefit will influence the conduct of the person in enrolling in the institution and participating in intercollegiate athletics.

(b) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (a).

(c) It is an exception to prosecution under this section that the person offering, conferring, or agreeing to confer a benefit and the person soliciting, accepting, or agreeing to accept a benefit are related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(d) It is an exception to prosecution under Subsection (a) that, not later than the 60th day after the date the person accepted or agreed to accept a benefit, the person contacted a law enforcement agency and furnished testimony or evidence about the offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the value of the benefit is less than \$20;

(2) Class B misdemeanor if the value of the benefit is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the benefit is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the benefit is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the benefit is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the benefit is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the benefit is \$200,000 or more.

Added by Acts 1989, 71st Leg., ch. 125, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 41, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) a trustee, guardian, administrator, executor, conservator, and receiver;

(B) an attorney in fact or agent appointed under a durable power of attorney as provided by Chapter XII, Texas Probate Code;

(C) any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 162.001, Tax Code; and

(D) 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 C misdemeanor if the value of the property misapplied is less than \$20;

(2) a Class B misdemeanor if the value of the property misapplied is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property misapplied is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the property misapplied is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the property misapplied is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the property misapplied is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property misapplied is \$200,000 or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 2, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 1036, Sec. 14, eff. Sept. 1, 1997; Acts 2001,  
77th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th  
Leg., ch. 198, Sec. 2.137, eff. Sept. 1, 2003; Acts 2003, 78th Leg.,  
ch. 257, Sec. 14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432,  
Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 23.001(77), eff.  
September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. [821](#)), Sec. 5, eff.

September 1, 2013.

Sec. 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:

(1) causes another to sign or execute any document affecting property or service or the pecuniary interest of any person; or

(2) causes or induces a public servant to file or record any purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court that is not expressly created or established under the constitution or the laws of this state or of the United States;

(B) a purported judicial entity that is not expressly created or established under the constitution or laws of this state or of the United States; or

(C) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A) or (B).

(b) An offense under Subsection (a)(1) is a:

(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than \$20;

(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property, service, or pecuniary interest is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property, service, or pecuniary interest is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property, service, or pecuniary interest is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property, service, or pecuniary interest is \$200,000 or more.

(c) An offense under Subsection (a)(2) is a state jail felony.

(c-1) An offense described for purposes of punishment by

Subsections (b)(1)-(6) and (c) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04 or involves the state Medicaid program.

(d) In this section:

(1) "Deception" has the meaning assigned by Section 31.01.

(2) "Document" includes electronically stored data or other information that is retrievable in a readable, perceivable form.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 2, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.138, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 15, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 6, eff. September 1, 2011.

Sec. 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) universal product codes, labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d), an offense under this

section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 21, Sec. 1, eff. Sept. 1, 2001.

Sec. 32.48. SIMULATING LEGAL PROCESS. (a) A person commits an offense if the person recklessly causes to be delivered to another any document that simulates a summons, complaint, judgment, or other court process with the intent to:

(1) induce payment of a claim from another person; or

(2) cause another to:

(A) submit to the putative authority of the document;

or

(B) take any action or refrain from taking any action in response to the document, in compliance with the document, or on the basis of the document.

(b) Proof that the document was mailed to any person with the intent that it be forwarded to the intended recipient is a sufficient showing that the document was delivered.

(c) It is not a defense to prosecution under this section that the simulating document:

(1) states that it is not legal process; or

(2) purports to have been issued or authorized by a person or entity who did not have lawful authority to issue or authorize the document.

(d) If it is shown on the trial of an offense under this section that the simulating document was filed with, presented to, or delivered to a clerk of a court or an employee of a clerk of a court created or established under the constitution or laws of this state,

there is a rebuttable presumption that the document was delivered with the intent described by Subsection (a).

(e) Except as provided by Subsection (f), an offense under this section is a Class A misdemeanor.

(f) If it is shown on the trial of an offense under this section that the defendant has previously been convicted of a violation of this section, the offense is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 3, eff. May 21, 1997.

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM. (a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

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

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

Sec. 32.50. DECEPTIVE PREPARATION AND MARKETING OF ACADEMIC PRODUCT. (a) For purposes of this section:

(1) "Academic product" means a term paper, thesis, dissertation, essay, report, recording, work of art, or other

written, recorded, pictorial, or artistic product or material submitted or intended to be submitted by a person to satisfy an academic requirement of the person.

(2) "Academic requirement" means a requirement or prerequisite to receive course credit or to complete a course of study or degree, diploma, or certificate program at an institution of higher education.

(3) "Institution of higher education" means an institution of higher education or private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, or a private postsecondary educational institution as that term is defined by Section 61.302, Education Code.

(b) A person commits an offense if, with intent to make a profit, the person prepares, sells, offers or advertises for sale, or delivers to another person an academic product when the person knows, or should reasonably have known, that a person intends to submit or use the academic product to satisfy an academic requirement of a person other than the person who prepared the product.

(c) A person commits an offense if, with intent to induce another person to enter into an agreement or obligation to obtain or have prepared an academic product, the person knowingly makes or disseminates a written or oral statement that the person will prepare or cause to be prepared an academic product to be sold for use in satisfying an academic requirement of a person other than the person who prepared the product.

(d) It is a defense to prosecution under this section that the actor's conduct consisted solely of action taken as an employee of an institution of higher education in providing instruction, counseling, or tutoring in research or writing to students of the institution.

(e) It is a defense to prosecution under this section that the actor's conduct consisted solely of offering or providing tutorial or editing assistance to another person in connection with the other person's preparation of an academic product to satisfy the other person's academic requirement, and the actor does not offer or provide substantial preparation, writing, or research in the production of the academic product.

(f) It is a defense to prosecution under this section that the actor's conduct consisted solely of typing, transcribing, or reproducing a manuscript for a fee, or of offering to do so.

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

Added by Acts 1997, 75th Leg., ch. 730, Sec. 1, eff. Sept. 1, 1997.  
Renumbered from Penal Code Sec. 32.49 by Acts 1999, 76th Leg., ch.  
62, Sec. 19.01(87), (88), eff. Sept. 1, 1999.

Sec. 32.51. FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) In this section:

(1) "Identifying information" means information that alone or in conjunction with other information identifies a person, including a person's:

- (A) name and date of birth;
- (B) unique biometric data, including the person's fingerprint, voice print, or retina or iris image;
- (C) unique electronic identification number, address, routing code, or financial institution account number;
- (D) telecommunication identifying information or access device; and
- (E) social security number or other government-issued identification number.

(2) "Telecommunication access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another telecommunication access device may be used to:

- (A) obtain money, goods, services, or other thing of value; or
- (B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

- (1) identifying information of another person without the other person's consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18

years of age.

(b-1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

- (1) the identifying information of three or more other persons;
- (2) information described by Subsection (b)(2) concerning three or more deceased persons; or
- (3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

(b-2) The presumption established under Subsection (b-1) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

(c) An offense under this section is:

- (1) a state jail felony if the number of items obtained, possessed, transferred, or used is less than five;
- (2) a felony of the third degree if the number of items obtained, possessed, transferred, or used is five or more but less than 10;
- (3) a felony of the second degree if the number of items obtained, possessed, transferred, or used is 10 or more but less than 50; or
- (4) a felony of the first degree if the number of items obtained, possessed, transferred, or used is 50 or more.

(c-1) An offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that:

- (1) the offense was committed against an elderly individual as defined by Section 22.04; or
- (2) the actor fraudulently used identifying information with the intent to facilitate an offense under Article 62.102, Code of Criminal Procedure.

(d) If a court orders a defendant convicted of an offense under this section to make restitution to the victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney's fees, incurred as a result of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 1999, 76th Leg., ch. 1159, Sec. 1, eff. Sept. 1, 1999.  
Amended by Acts 2003, 78th Leg., ch. 1104, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 631 (H.B. 649), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1163 (H.B. 126), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1173 (H.B. 460), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1173 (H.B. 460), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.002, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 276 (H.B. 1529), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 362 (H.B. 2637), Sec. 2, eff. September 1, 2013.

Sec. 32.52. FRAUDULENT, SUBSTANDARD, OR FICTITIOUS DEGREE. (a) In this section, "fraudulent or substandard degree" has the meaning assigned by Section 61.302, Education Code.

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

(1) uses or claims to hold a postsecondary degree that the person knows:

(A) is a fraudulent or substandard degree;

(B) is fictitious or has otherwise not been granted to the person; or

(C) has been revoked; and

(2) uses or claims to hold that degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, a compensation or other

benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

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

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 1039 (H.B. 1173), Sec. 8, eff. September 1, 2005.

Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(2) "Exploitation" means the illegal or improper use of a child, elderly individual, or disabled individual or of the resources of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.

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

(d) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under

this section that involves the Medicaid program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 7, eff. September 1, 2011.

Sec. 32.54. FRAUDULENT OR FICTITIOUS MILITARY RECORD. (a) In this section:

(1) "Military record" means an enlistment record, occupation specialty, medal, award, decoration, or certification obtained by a person through the person's service in the armed forces of the United States or the state military forces.

(2) "State military forces" has the meaning assigned by Section 437.001, Government Code.

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

(1) uses or claims to hold a military record that the person knows:

(A) is fraudulent;

(B) is fictitious or has otherwise not been granted or assigned to the person; or

(C) has been revoked; and

(2) uses or claims to hold that military record:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain priority in receiving services or resources under Subchapter G, Chapter 302, Labor Code;

(ii) qualify for a veteran's employment preference under Chapter 657, Government Code;

(iii) obtain a license or certificate to practice a trade, profession, or occupation;

(iv) obtain a promotion, compensation, or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(v) obtain a benefit, service, or donation from another person;

(vi) obtain admission to an educational program in this state; or

(vii) gain a position in state government with authority over another person, regardless of whether the actor

receives compensation for the position.

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

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 386 (S.B. 431), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.19, eff. September 1, 2013.

### CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer network, computer program, or computer system.

(2) "Aggregate amount" means the amount of:

(A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen or rendered unrecoverable by the offense; or

(B) any expenditure required by the victim to verify that a computer, computer network, computer program, or computer system was not altered, acquired, damaged, deleted, or disrupted by the offense.

(3) "Communications common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(5) "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line, or

other communication medium with the capability to transmit information among the computers.

(6) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(7) "Computer services" means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(8) "Computer system" means any combination of a computer or computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(9) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(10) "Computer virus" means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

(10-a) "Critical infrastructure facility" means:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

(J) a transmission facility used by a federally licensed radio or television station; or

(K) a cable television or video service provider

headend.

(11) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, laser storage media, and punchcards, or may be stored internally in the memory of the computer.

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

(A) induced by deception, as defined by Section 31.01, or induced by 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;

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

(E) used for a purpose other than that for which the consent was given.

(13) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(14) "Harm" includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

(14-a) "Identifying information" has the meaning assigned by Section 32.51.

(15) "Owner" means a person who:

(A) 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;

(B) has the right to restrict access to the property;

or

(C) is the licensee of data or computer software.

(16) "Property" means:

(A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data; or

(B) the use of a computer, computer system, computer network, computer software, or data.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985.  
Amended by Acts 1989, 71st Leg., ch. 306, Sec. 1, eff. Sept. 1, 1989;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 306, Sec. 1, eff. Sept. 1, 1997; Acts 1999,  
76th Leg., ch. 62, Sec. 18.44, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1044 (H.B. [3396](#)), Sec. 1, eff.  
September 1, 2011.

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a state jail felony if:

(1) the defendant has been previously convicted two or more times of an offense under this chapter; or

(2) the computer, computer network, or computer system is owned by the government or a critical infrastructure facility.

(b-1) A person commits an offense if with the intent to defraud or harm another or alter, damage, or delete property, the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b-2) An offense under Subsection (b-1) is:

(1) a state jail felony if the aggregate amount involved is less than \$20,000;

(2) a felony of the third degree if the aggregate amount involved is \$20,000 or more but less than \$100,000;

(3) a felony of the second degree if:

(A) the aggregate amount involved is \$100,000 or more but less than \$200,000;

(B) the aggregate amount involved is any amount less than \$200,000 and the computer, computer network, or computer system

is owned by the government or a critical infrastructure facility; or  
 (C) the actor obtains the identifying information of another by accessing only one computer, computer network, or computer system; or

(4) a felony of the first degree if:

(A) the aggregate amount involved is \$200,000 or more; or

(B) the actor obtains the identifying information of another by accessing more than one computer, computer network, or computer system.

(c) When benefits are obtained, a victim is defrauded or harmed, or property is altered, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, damage, or deletion of property may be aggregated in determining the grade of the offense.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

(e) It is a defense to prosecution under this section that the person acted with the intent to facilitate a lawful seizure or search of, or lawful access to, a computer, computer network, or computer system for a legitimate law enforcement purpose.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985.

Amended by Acts 1989, 71st Leg., ch. 306, Sec. 2, eff. Sept. 1, 1989;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts

1997, 75th Leg., ch. 306, Sec. 2, eff. Sept. 1, 1997; Acts 2001,

77th Leg., ch. 1411, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1044 (H.B. [3396](#)), Sec. 2, eff. September 1, 2011.

Sec. 33.021. ONLINE SOLICITATION OF A MINOR. (a) In this section:

(1) "Minor" means:

(A) an individual who represents himself or herself to be younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

(2) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(3) "Sexually explicit" means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.

(b) A person who is 17 years of age or older commits an offense if, with the intent to arouse or gratify the sexual desire of any person, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

(d) It is not a defense to prosecution under Subsection (c) that:

(1) the meeting did not occur;

(2) the actor did not intend for the meeting to occur; or

(3) the actor was engaged in a fantasy at the time of commission of the offense.

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection (b) or (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

(f) An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Subsection (c) is a felony of the second degree.

(g) If conduct that constitutes an offense under this section

also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2005, 79th Leg., Ch. 1273 (H.B. 2228), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 610 (H.B. 401), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1291 (S.B. 6), Sec. 7, eff. September 1, 2007.

Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the 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 communications common carrier or electric utility.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 33.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 33.04. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 33.05 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 33.05. TAMPERING WITH DIRECT RECORDING ELECTRONIC VOTING MACHINE. (a) In this section:

(1) "Direct recording electronic voting machine" has the meaning assigned by Section 121.003, Election Code.

(2) "Measure" has the meaning assigned by Section 1.005,

Election Code.

(b) A person commits an offense if the person knowingly accesses a computer, computer network, computer program, computer software, or computer system that is a part of a voting system that uses direct recording electronic voting machines and by means of that access:

- (1) prevents a person from lawfully casting a vote;
- (2) changes a lawfully cast vote;
- (3) prevents a lawfully cast vote from being counted; or
- (4) causes a vote that was not lawfully cast to be counted.

(c) An offense under this section does not require that the votes as affected by the person's actions described by Subsection (b) actually be the votes used in the official determination of the outcome of the election.

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

(e) Notwithstanding Section 15.01(d), an offense under Section 15.01(a) is a felony of the third degree if the offense the actor intends to commit is an offense under this section.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to investigate or prosecute an offense under this section.

Added by Acts 2005, 79th Leg., Ch. 470 (H.B. 56), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 503 (S.B. 927), Sec. 1, eff. September 1, 2009.

Sec. 33.07. ONLINE IMPERSONATION. (a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:

- (1) create a web page on a commercial social networking site or other Internet website; or
- (2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board

program.

(b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:

(1) without obtaining the other person's consent;

(2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and

(3) with the intent to harm or defraud any person.

(c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:

(1) a commercial social networking site;

(2) an Internet service provider;

(3) an interactive computer service, as defined by 47 U.S.C. Section 230;

(4) a telecommunications provider, as defined by Section 51.002, Utilities Code; or

(5) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code.

(f) In this section:

(1) "Commercial social networking site" means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.

(2) "Identifying information" has the meaning assigned by

Section 32.51.

Added by Acts 2009, 81st Leg., R.S., Ch. 911 (H.B. 2003), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 282 (H.B. 1666), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 282 (H.B. 1666), Sec. 2, eff. September 1, 2011.

### CHAPTER 33A. TELECOMMUNICATIONS CRIMES

Sec. 33A.01. DEFINITIONS. In this chapter:

(1) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, not issued to a legitimate telecommunications access device subscriber account, or otherwise unlawful or invalid.

(2) "Counterfeit telecommunications device" means a telecommunications device that has been altered or programmed alone or with another telecommunications device to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider and includes a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(3) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, or a counterfeit telecommunications device or any telecommunications plans, instructions, or materials, to another person.

(4) "Publish" means to communicate information or make information available to another person orally, in writing, or by means of telecommunications and includes communicating information on a computer bulletin board or similar system.

(5) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence over a communications system by any method, including an electronic, magnetic, optical, digital, or analog method.

(6) "Telecommunications access device" means an instrument, device, card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(7) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications and includes a computer, computer chip or circuit, telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(8) "Telecommunications service" means the provision, facilitation, or generation of telecommunications through the use of a telecommunications device or telecommunications access device over a telecommunications system.

(9) "Value of the telecommunications service obtained or attempted to be obtained" includes the value of:

(A) a lawful charge for telecommunications service avoided or attempted to be avoided;

(B) money, property, or telecommunications service lost, stolen, or rendered unrecoverable by an offense; and

(C) an expenditure incurred by a victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, or disrupted as a result of an offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.02. UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICE.

(a) A person commits an offense if the person is an officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider and the person knowingly and without authority uses or diverts telecommunications service for the person's own benefit or to the benefit of another.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service used or diverted is less than \$500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service used or diverted is \$500 or more but less than \$1,500; or

(B) the value of the telecommunications service used or diverted is less than \$500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service used or diverted is \$1,500 or more but less than \$20,000; or

(B) the value of the telecommunications service used or diverted is less than \$1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service used or diverted is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the value of the telecommunications service used or diverted is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the value of the telecommunications service used or diverted is \$200,000 or more.

(c) When telecommunications service is used or diverted in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service used or diverted may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.03. MANUFACTURE, POSSESSION, OR DELIVERY OF UNLAWFUL TELECOMMUNICATIONS DEVICE. (a) A person commits an offense if the person manufactures, possesses, delivers, offers to deliver, or advertises:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to:

(A) commit an offense under Section 33A.04; or

(B) conceal the existence or place of origin or destination of a telecommunications service.

(b) A person commits an offense if the person delivers, offers

to deliver, or advertises plans, instructions, or materials for manufacture of:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to commit an offense under Subsection (a).

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

(d) It is a defense to prosecution under this section that the person was an officer, agent, or employee of a telecommunications service provider who engaged in the conduct for the purpose of gathering information for a law enforcement investigation related to an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.04. THEFT OF TELECOMMUNICATIONS SERVICE. (a) A person commits an offense if the person knowingly obtains or attempts to obtain telecommunications service to avoid or cause another person to avoid a lawful charge for that service by using:

(1) a telecommunications access device without the authority or consent of the subscriber or lawful holder of the device or pursuant to an agreement for an exchange of value with the subscriber or lawful holder of the device to allow another person to use the device;

(2) a counterfeit telecommunications access device;

(3) a telecommunications device or counterfeit telecommunications device; or

(4) a fraudulent or deceptive scheme, pretense, method, or conspiracy, or other device or means, including a false, altered, or stolen identification.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service obtained or attempted to be obtained is less than \$500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service obtained or attempted to be obtained is \$500 or more but less than \$1,500; or

(B) the value of the telecommunications service

obtained or attempted to be obtained is less than \$500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service obtained or attempted to be obtained is \$1,500 or more but less than \$20,000; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than \$1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service obtained or attempted to be obtained is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the value of the telecommunications service obtained or attempted to be obtained is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the value of the telecommunications service obtained or attempted to be obtained is \$200,000 or more.

(c) When telecommunications service is obtained or attempted to be obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service obtained or attempted to be obtained may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.05. PUBLICATION OF TELECOMMUNICATIONS ACCESS DEVICE.

(a) A person commits an offense if the person with criminal negligence publishes a telecommunications access device or counterfeit telecommunications access device that is designed to be used to commit an offense under Section 33A.04.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under this section is a felony of the third degree if the person has been previously convicted of an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.06. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of telecommunications equipment, services, or devices.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

#### CHAPTER 34. MONEY LAUNDERING

Sec. 34.01. DEFINITIONS. In this chapter:

(1) "Criminal activity" means any offense, including any preparatory offense, that is:

(A) classified as a felony under the laws of this state or the United States; or

(B) punishable by confinement for more than one year under the laws of another state.

(2) "Funds" includes:

(A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;

(B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes;

(C) an official foreign bank note that is customarily used and accepted as a medium of exchange in a foreign country and a foreign bank draft; and

(D) currency or its equivalent, including an electronic fund, a personal check, a bank check, a traveler's check, a money order, a bearer negotiable instrument, a bearer investment security, a bearer security, a certificate of stock in a form that allows title to pass on delivery, or a stored value card as defined by Section 604.001, Business & Commerce Code.

(3) "Financial institution" has the meaning assigned by Section 32.01.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, realized through, or used in the commission of:

(A) an act; or  
(B) conduct that constitutes an offense under Section 151.7032, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.  
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 928 (H.B. 1523), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. 1451), Sec. 5, eff. September 1, 2013.

Sec. 34.02. MONEY LAUNDERING. (a) A person commits an offense if the person knowingly:

(1) acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity;

(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or

(4) finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity.

(a-1) Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(b) For purposes of this section, a person is presumed to believe that funds are the proceeds of or are intended to further the commission of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of or are intended to further the commission of criminal activity, as applicable, regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting

at the direction of a peace officer.

(c) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose pursuant to the laws of this state or the United States.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution and by Article 1, Section 10, of the Texas Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(e) An offense under this section is:

(1) a state jail felony if the value of the funds is \$1,500 or more but less than \$20,000;

(2) a felony of the third degree if the value of the funds is \$20,000 or more but less than \$100,000;

(3) a felony of the second degree if the value of the funds is \$100,000 or more but less than \$200,000; or

(4) a felony of the first degree if the value of the funds is \$200,000 or more.

(f) For purposes of this section, if proceeds of criminal activity are related 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 value of the proceeds aggregated in determining the classification of the offense.

(g) For purposes of this section, funds on deposit at a branch of a financial institution are considered the property of that branch and any other branch of the financial institution.

(h) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. [3376](#)), Sec. 2, eff. September 1, 2005.

Sec. 34.021. PROTECTION FROM CIVIL LIABILITY. Notwithstanding Section 1.03(c), a financial institution or an agent of the financial institution acting in a manner described by Section 34.02(c) is not liable for civil damages to a person who:

(1) claims an ownership interest in funds involved in an offense under Section 34.02; or

(2) conducts with the financial institution or an insurer, as defined by Article 1.02, Insurance Code, a transaction concerning funds involved in an offense under Section 34.02.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 3, eff. September 1, 2005.

Sec. 34.03. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist in the prosecution of an offense under this chapter.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.

#### CHAPTER 35. INSURANCE FRAUD

Sec. 35.01. DEFINITIONS. In this chapter:

(1) "Insurance policy" means a written instrument in which is provided the terms of any certificate of insurance, binder of coverage, contract of insurance, benefit plan, nonprofit hospital service plan, motor club service plan, surety bond, cash bond, or any other alternative to insurance authorized by Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance.

(2) "Insurer" has the meaning assigned by Article 1.02, Insurance Code.

(3) "Statement" means an oral or written communication or a record or documented representation of fact made to an insurer. The term includes computer-generated information.

(4) "Value of the claim" means the total dollar amount of a claim for payment under an insurance policy or, as applicable, the value of the claim determined under Section 35.025.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.830, eff. Sept. 1,

2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.541, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.015. MATERIALITY. A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

- (1) the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy; or
- (2) the decision of an insurer whether to issue an insurance policy.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.02. INSURANCE FRAUD. (a) A person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy:

- (1) prepares or causes to be prepared a statement that:
  - (A) the person knows contains false or misleading material information; and
  - (B) is presented to an insurer; or
- (2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(a-1) A person commits an offense if the person, with intent to defraud or deceive an insurer and in support of an application for an insurance policy:

- (1) prepares or causes to be prepared a statement that:
  - (A) the person knows contains false or misleading material information; and
  - (B) is presented to an insurer; or
- (2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(b) A person commits an offense if, with intent to defraud or

deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of goods or services for which a claim for payment is submitted under an insurance policy.

(c) An offense under Subsection (a) or (b) is:

(1) a Class C misdemeanor if the value of the claim is less than \$50;

(2) a Class B misdemeanor if the value of the claim is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the value of the claim is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the claim is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the claim is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the claim is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if:

(A) the value of the claim is \$200,000 or more; or

(B) an act committed in connection with the commission of the offense places a person at risk of death or serious bodily injury.

(d) An offense under Subsection (a-1) is a state jail felony.

(e) The court shall order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(g) For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

(h) If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2003, 78th Leg., ch. 605, Sec. 1, eff. Sept. 1, 2003.  
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff.  
September 1, 2005.

Sec. 35.025. VALUE OF CLAIM. (a) Except as provided by Subsection (b) and subject to Subsection (c), for the purposes of Section 35.02(c), if the value of a claim is not readily ascertainable, the value of the claim is:

(1) the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or

(2) the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

(b) If goods or services that are the subject of a claim cannot be reasonably ascertained under Subsection (a), the goods or services are considered to have a value of \$500 or more but less than \$1,500.

(c) If the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff.  
September 1, 2005.

Sec. 35.03. AGGREGATION AND MULTIPLE OFFENSES. (a) When separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the claims aggregated in determining the classification of the offense. If claims are aggregated under this subsection, Subsection (b) shall not apply.

(b) When three or more separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the classification of the offense

shall be one category higher than the most serious single offense proven from the separate claims, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree. This subsection shall not be applied if claims are aggregated under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

Sec. 35.04. JURISDICTION OF ATTORNEY GENERAL. (a) The attorney general may offer to an attorney representing the state in the prosecution of an offense under Section 35.02 the investigative, technical, and litigation assistance of the attorney general's office.

(b) The attorney general may prosecute or assist in the prosecution of an offense under Section 35.02 on the request of the attorney representing the state described by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

#### **CHAPTER 35A. MEDICAID FRAUD**

Sec. 35A.01. DEFINITIONS. In this chapter:

(1) "Claim" has the meaning assigned by Section 36.001, Human Resources Code.

(2) "Fiscal agent" has the meaning assigned by Section 36.001, Human Resources Code.

(3) "Health care practitioner" has the meaning assigned by Section 36.001, Human Resources Code.

(4) "Managed care organization" has the meaning assigned by Section 36.001, Human Resources Code.

(5) "Medicaid program" has the meaning assigned by Section 36.001, Human Resources Code.

(6) "Medicaid recipient" has the meaning assigned by Section 36.001, Human Resources Code.

(7) "Physician" has the meaning assigned by Section 36.001, Human Resources Code.

(8) "Provider" has the meaning assigned by Section 36.001, Human Resources Code.

(9) "Service" has the meaning assigned by Section 36.001, Human Resources Code.

(10) "High managerial agent" means a director, officer, or employee who is authorized to act on behalf of a provider and has duties of such responsibility that the conduct of the director, officer, or employee reasonably may be assumed to represent the policy or intent of the provider.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 8, eff. September 1, 2011.

Sec. 35A.02. MEDICAID FRAUD. (a) A person commits an offense if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

- (i) a hospital;
- (ii) a nursing facility or skilled nursing facility;
- (iii) a hospice;
- (iv) an intermediate care facility for the mentally

retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals

eligible under the Medicaid program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section or under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is less than \$50;

(2) a Class B misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$50 or more but less than \$500;

(3) a Class A misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$500 or more but less than \$1,500;

(4) a state jail felony if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$1,500 or more but less than \$20,000;

(B) the offense is committed under Subsection (a)(11);

or

(C) it is shown on the trial of the offense that the

amount of the payment or value of the benefit described by this subsection cannot be reasonably ascertained;

(5) a felony of the third degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$20,000 or more but less than \$100,000; or

(B) it is shown on the trial of the offense that the defendant submitted more than 25 but fewer than 50 fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a);

(6) a felony of the second degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$100,000 or more but less than \$200,000; or

(B) it is shown on the trial of the offense that the defendant submitted 50 or more fraudulent claims under the Medicaid program and the submission of each claim constitutes conduct prohibited by Subsection (a); or

(7) a felony of the first degree if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under the Medicaid program, directly or indirectly, as a result of the conduct is \$200,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision or both this section and the other section or provision.

(d) When multiple payments or monetary or in-kind benefits are provided under the Medicaid program as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

(e) The punishment prescribed for an offense under this section, other than the punishment prescribed by Subsection (b)(7), is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a provider or high managerial agent at the time of the offense.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 9, eff. September 1, 2011.

## **TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION**

### **CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE**

Sec. 36.01. DEFINITIONS. In this chapter:

(1) "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.

(2) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(3) "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(4) "Vote" means to cast a ballot in an election regulated by law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, Sec. 1, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 67, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 304, Sec. 4.01, eff. Jan. 1, 1992; Acts 1991, 72nd Leg., ch. 565, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(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) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, Sec. 2, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, Sec. 4.02, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 influences or attempts to influence a public servant to violate the public servant's known legal 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.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1989, 71st Leg., ch. 67, Sec. 1, 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 he coerces a witness or a 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;

(4) to absent himself from an official proceeding to which he has been legally summoned; or

(5) to abstain from, discontinue, or delay the prosecution of another.

(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).

(c) It is a defense to prosecution under Subsection (a)(5) that the benefit received was:

(1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and

(2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

(d) An offense under this section is a felony of the third degree, except that if the official proceeding is part of the prosecution of a criminal case, an offense under this section is the same category of offense as the most serious offense charged in that criminal case.

(e) Notwithstanding Subsection (d), if the most serious offense charged is a capital felony, an offense under this section is a

felony of the first degree.

(e-1) Notwithstanding Subsection (d), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, an offense under this section is the greater of:

- (1) a felony of the third degree; or
- (2) the most serious offense charged in the criminal case.

(e-2) Notwithstanding Subsections (d) and (e-1), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, and it is shown at the trial of the offense that the defendant has previously been convicted of an offense involving family violence under the laws of this state or another state, an offense under this section is the greater of:

- (1) a felony of the second degree; or
- (2) the most serious offense charged in the criminal case.

(e-3) For purposes of Subsection (a), a person is considered to coerce a witness or prospective witness if the person commits an act of family violence as defined by Section 71.004, Family Code, that is perpetrated, in part, with the intent to cause the witness's or prospective witness's unavailability or failure to comply and the offense is punishable under Subsection (e-1) or (e-2), as applicable.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 721, Sec. 1, eff. Sept. 1, 1997.  
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 770 (H.B. 1856), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 2, eff. September 1, 2013.

Sec. 36.06. OBSTRUCTION OR RETALIATION. (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act:

- (1) in retaliation for or on account of the service or

status of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime; or

(2) to prevent or delay the service of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

(b) In this section:

(1) "Honorably retired peace officer" means a peace officer who:

(A) did not retire in lieu of any disciplinary action;

(B) was eligible to retire from a law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the agency; and

(C) is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(2) "Informant" means a person who has communicated information to the government in connection with any governmental function.

(3) "Public servant" includes an honorably retired peace officer.

(c) An offense under this section is a felony of the third degree unless the victim of the offense was harmed or threatened because of the victim's service or status as a juror, in which event the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3238, ch. 558, Sec. 4, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 557, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 835, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 246, Sec. 1, eff. Sept. 1, 2003.

Sec. 36.07. ACCEPTANCE OF HONORARIUM. (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.

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

Added by Acts 1991, 72nd Leg., ch. 304, Sec. 4.03, eff. Jan. 1, 1992.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 56 (S.B. [1269](#)), Sec. 1, eff. September 1, 2011.

Sec. 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 member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Sec. 36.10(b) does not apply to a benefit under this subsection.

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

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept.

1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, Sec. 5, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, Sec. 4.04, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.10. NON-APPLICABLE. (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) 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) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, 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;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under

Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

(8) transportation, lodging, and meals described by Section 36.07(b); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:

(A) to a public servant who is a first responder; and

(B) through a program or clinic that is:

(i) operated by a local bar association or the State Bar of Texas; and

(ii) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

(d) Section 36.08 (Gift to Public Servant) does not apply to a gratuity accepted and reported in accordance with Section 11.0262, Parks and Wildlife Code. Section 36.09 (Offering Gift to Public Servant) does not apply to a gratuity that is offered in accordance with Section 11.0262, Parks and Wildlife Code.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel, as that term is defined by Section 419.021, Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;

- (4) an ambulance driver; or
- (5) an individual certified as emergency medical services personnel by the Department of State Health Services.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
 Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, Sec. 6, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 472, Sec. 60, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, Sec. 4.05, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(38), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 639 (H.B. 2685), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 56 (S.B. 1269), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1149 (S.B. 148), Sec. 1, eff. September 1, 2013.

#### CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter:

- (1) "Court record" means a decree, judgment, order, subpoena, warrant, minutes, or other document issued by a court of:
  - (A) this state;
  - (B) another state;
  - (C) the United States;
  - (D) a foreign country recognized by an act of congress or a treaty or other international convention to which the United States is a party;
  - (E) an Indian tribe recognized by the United States;
 or
  - (F) any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the United States Constitution.
- (2) "Governmental record" means:
  - (A) anything belonging to, received by, or kept by government for information, including a court record;
  - (B) anything required by law to be kept by others for

information of government;

(C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States;

(D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.046(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code;

(E) an official ballot or other election record; or

(F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code.

(3) "Statement" means any representation of fact.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1991, 72nd Leg., ch. 113, Sec. 3, eff. Sept. 1, 1991;  
Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts  
1997, 75th Leg., ch. 189, Sec. 5, eff. May 21, 1997; Acts 1997, 75th  
Leg., ch. 823, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch.  
659, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 393, Sec.  
21, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1276 (H.B. [3672](#)), Sec. 2, eff.  
September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 16.004,  
eff. September 1, 2013.

Sec. 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 the statement is required or authorized by law to be made under oath; or

(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02, 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 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 (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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 (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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 or aggravated perjury under Section 37.03 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) 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) 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, OR LAW ENFORCEMENT EMPLOYEE. (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:

(1) a peace officer or federal special investigator conducting the investigation; or

(2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation.

(b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 925, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 3, eff. September 1, 2011.

Sec. 37.081. FALSE REPORT REGARDING MISSING CHILD OR MISSING PERSON. (a) A person commits an offense if, with intent to deceive, the person knowingly:

(1) files a false report of a missing child or missing person with a law enforcement officer or agency; or

(2) makes a false statement to a law enforcement officer or other employee of a law enforcement agency relating to a missing child or missing person.

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

Added by Acts 1999, 76th Leg., ch. 200, Sec. 3, eff. Sept. 1, 1999.

Sec. 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 Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3)(B) of that section.

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

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency.

(e) In this section, "human corpse" has the meaning assigned by Section 42.08.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 4, eff. Sept. 1, 1991;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 287 (H.B. 872), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 1, eff. September 1, 2011.

Sec. 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;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), 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 state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law or rule requiring that reporting, or a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the

connection or relevance of the evidence to a criminal action; or

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board under Section 41.43(a-1), Tax Code, that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of

governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 66, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 113, Sec. 4, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 565, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 6, eff. May 21, 1997; Acts 1997, 75th Leg., ch. 823, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 659, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 718, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 771, Sec. 3, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.139, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 16, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1364 (H.B. [126](#)), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1085 (H.B. [3024](#)), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 73 (H.B. [1813](#)), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. [2086](#)), Sec. 31, eff.

September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 1, eff.  
September 1, 2013.

Sec. 37.101. FRAUDULENT FILING OF FINANCING STATEMENT. (a) A person commits an offense if the person knowingly presents for filing or causes to be presented for filing a financing statement that the person knows:

- (1) is forged;
- (2) contains a material false statement; or
- (3) is groundless.

(b) An offense under Subsection (a)(1) is a felony of the third degree, unless it is shown on the trial of the offense that the person had previously been convicted under this section on two or more occasions, in which event the offense is a felony of the second degree. An offense under Subsection (a)(2) or (a)(3) is a Class A misdemeanor, unless the person commits the offense with the intent to defraud or harm another, in which event the offense is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 10, eff. May 21, 1997.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he:

- (1) impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts; or
- (2) knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 7, eff. May 21, 1997.

Sec. 37.12. FALSE IDENTIFICATION AS PEACE OFFICER;  
MISREPRESENTATION OF PROPERTY. (a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the item bearing the insignia knows that the person so identified by the item is not commissioned as a peace officer or reserve law enforcement officer as indicated on the item.

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

(1) the card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse;

(2) the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was commissioned in that capacity when the item was made; or

(3) the item was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(c) In this section, "reserve law enforcement officer" has the same meaning as is given that term in Section 1701.001, Occupations Code.

(d) A person commits an offense if the person intentionally or knowingly misrepresents an object as property belonging to a law enforcement agency.

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

Added by Acts 1983, 68th Leg., p. 5672, ch. 1075, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 514, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1420, Sec. 14.831, eff. Sept. 1, 2001.

Sec. 37.13. RECORD OF A FRAUDULENT COURT. (a) A person commits an offense if the person makes, presents, or uses any document or other record with:

(1) knowledge that the document or other record is not a

record of a court created under or established by the constitution or laws of this state or of the United States; and

(2) the intent that the document or other record be given the same legal effect as a record of a court created under or established by the constitution or laws of this state or of the United States.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section on two or more occasions.

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.10, the actor may be prosecuted under any of those sections.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 8, eff. May 21, 1997.

Sec. 37.14. FALSE STATEMENT REGARDING CHILD CUSTODY DETERMINATION MADE IN FOREIGN COUNTRY. (a) For purposes of this section, "child custody determination" has the meaning assigned by Section 152.102, Family Code.

(b) A person commits an offense if the person knowingly makes or causes to be made a false statement relating to a child custody determination made in a foreign country during a hearing held under Chapter 152 or Subchapter I, Chapter 153, Family Code.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 92 (S.B. 1490), Sec. 3, eff. September 1, 2011.

## CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States; or

(B) under restraint by an agent or employee of a facility that is operated by or under contract with the United States and that confines persons arrested for, charged with, or convicted of

criminal offenses.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

(3) "Economic benefit" means anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.

(4) "Finance" means to provide funds or capital or to furnish with necessary funds.

(5) "Fugitive from justice" means a person for whom a valid arrest warrant has been issued.

(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "Invest funds" means to commit money to earn a financial return.

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(9) "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(10) "Public media" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access

by dialing a telephone number, or a written communication not prohibited by Section 38.12(d).

(11) "Solicit employment" means to communicate in person or by telephone with a prospective client or a member of the prospective client's family concerning professional employment within the scope of a professional's license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional's license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated by a family member of the person receiving a communication, a communication by a professional who has a prior or existing professional-client relationship with the person receiving the communication, or communication by an attorney for a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by a professional through public media.

(12) "Professional" means an attorney, chiropractor, physician, surgeon, private investigator, or any other person licensed, certified, or registered by a state agency that regulates a health care profession.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 866, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(14), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 42, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 723, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.103, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 293, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 750, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an

offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) Except as provided by Subsections (d) and (e), an offense under this section is:

- (1) a Class C misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class B misdemeanor if the offense is committed under Subsection (b).

(d) If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense, the offense is:

- (1) a Class B misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class A misdemeanor if the offense is committed under Subsection (b).

(e) If conduct that constitutes an offense under this section also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1987, 70th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1987.  
Acts 1991, 72nd Leg., ch. 821, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2003.

Sec. 38.03. RESISTING ARREST, SEARCH, OR TRANSPORTATION. (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, search, or transportation 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), 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, Sec. 1, eff. Jan. 1, 1974.

Acts 1991, 72nd Leg., ch. 277, Sec. 1, 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to arrest or detain him.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 4, and Ch. 391, Sec. 1

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if:

(A) the actor has been previously convicted under this section; or

(B) the actor uses a vehicle or watercraft while the actor is in flight and the actor has not been previously convicted under this section;

(2) a felony of the third degree if:

(A) the actor uses a vehicle or watercraft while the actor is in flight and the actor has been previously convicted under this section; or

(B) another suffers serious bodily injury as a direct result of an attempt by the officer or investigator from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(3) a felony of the second degree if another suffers death as a direct result of an attempt by the officer or investigator from whom the actor is fleeing to apprehend the actor while the actor is in flight.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 920

## (S.B. 1416), Sec. 3

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the actor has been previously convicted under this section;

(2) a felony of the third degree if:

(A) the actor uses a vehicle while the actor is in flight;

(B) another suffers serious bodily injury as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(C) the actor uses a tire deflation device against the officer while the actor is in flight; or

(3) a felony of the second degree if:

(A) another suffers death as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(B) another suffers serious bodily injury as a direct result of the actor's use of a tire deflation device while the actor is in flight.

(c) In this section:

(1) "Vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(2) "Tire deflation device" has the meaning assigned by Section 46.01.

(3) "Watercraft" has the meaning assigned by Section 49.01.

(d) A person who is subject to prosecution under both this section and another law may be prosecuted under either or both this section and the other law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1987, 70th Leg., ch. 504, Sec. 1, eff. Sept. 1, 1987.

Acts 1989, 71st Leg., ch. 126, Sec. 1, eff. Sept. 1, 1989; Acts

1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995,

74th Leg., ch. 708, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th

Leg., ch. 165, Sec. 30.240, eff. Sept. 1, 1997; Acts 2001, 77th

Leg., ch. 1334, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg.,

ch. 1480, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1400 (H.B. 221), Sec. 4, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 391 (S.B. 496), Sec. 1, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 4, eff.  
September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 3, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(38),  
eff. September 1, 2013.

Sec. 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 or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias, 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) that the warning was given in connection with an effort to bring another into compliance with the law.

(c) Except as provided by Subsection (d), 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 person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, including an offense under Section 62.102, Code of Criminal Procedure, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony, including an offense under Section 62.102, Code of Criminal Procedure, and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a

felony, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1991, 72nd Leg., ch. 748, Sec. 1, eff. Sept. 1, 1991;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts

1995, 74th Leg., ch. 318, Sec. 11, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 607 (H.B. 2104), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.19, eff. September 1, 2007.

Sec. 38.06. ESCAPE. (a) A person commits an offense if the person escapes from custody when the person is:

(1) under arrest for, lawfully detained for, charged with, or convicted of an offense;

(2) in custody pursuant to a lawful order of a court;

(3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or

(4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 52.01, Family Code.

(b) Except as provided in Subsections (c), (d), and (e), 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;

(2) is confined or lawfully detained in a secure correctional facility or law enforcement facility; or

(3) is committed to or lawfully detained in a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Youth Commission.

(d) An offense under this section is a felony of the second degree if the actor to effect his escape causes bodily injury.

(e) An offense under this section is a felony of the first

degree if to effect his escape the actor:

- (1) causes serious bodily injury; or
- (2) uses or threatens to use a deadly weapon.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1985, 69th Leg., ch. 328, Sec. 1, eff. Sept. 1, 1985.

Renumbered from Penal Code Sec. 38.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 526, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 38, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1330 (S.B. 844), Sec. 1, eff. September 1, 2011.

Sec. 38.07. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of a correctional facility commits an offense if he knowingly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he knowingly causes or facilitates the escape of one who is in custody pursuant to:

- (1) an allegation or adjudication of delinquency; or
- (2) involuntary commitment for mental illness under

Subtitle C, Title 7, Health and Safety Code, or for chemical dependency under Chapter 462, Health and Safety Code.

(c) Except as provided in Subsections (d) and (e), 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 person in custody:

(1) was under arrest for, charged with, or convicted of a felony; or

(2) was confined in a correctional facility other than a secure correctional facility after conviction of a felony.

(e) An offense under this section is a felony of the second degree if:

(1) the actor or the person in custody used or threatened to use a deadly weapon to effect the escape; or

(2) the person in custody was confined in a secure correctional facility after conviction of a felony.

(f) In this section, "correctional facility" means:

- (1) any place described by Section 1.07(a)(14); or
- (2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 38.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 39, eff. September 1, 2007.

Sec. 38.08. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.06 or 38.07 that the custody was unlawful.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 38.09 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.09. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a correctional facility, or provides a person in custody or 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.

(c) In this section, "correctional facility" means:

- (1) any place described by Section 1.07(a)(14); or
- (2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 38.10 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 40, eff. September 1, 2007.

Sec. 38.10. 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) It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence.

(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), 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, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 38.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL FACILITY. (a) A person commits an offense if the person provides, or possesses with the intent to provide:

(1) an alcoholic beverage, controlled substance, or dangerous drug to a person in the custody of a correctional facility, except on the prescription of a practitioner;

(2) a deadly weapon to a person in the custody of a correctional facility;

(3) a cellular telephone or other wireless communications device or a component of one of those devices to a person in the custody of a correctional facility;

(4) money to a person confined in a correctional facility;  
or

(5) a cigarette or tobacco product to a person confined in a correctional facility, except that if the facility is a local jail

regulated by the Commission on Jail Standards, the person commits an offense only if providing the cigarette or tobacco product violates a rule or regulation adopted by the sheriff or jail administrator that:

(A) prohibits the possession of a cigarette or tobacco product by a person confined in the jail; or

(B) places restrictions on:

(i) the possession of a cigarette or tobacco product by a person confined in the jail; or

(ii) the manner in which a cigarette or tobacco product may be provided to a person confined in the jail.

(b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility.

(c) A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility.

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

(1) possesses a controlled substance or dangerous drug while in a correctional facility or on property owned, used, or controlled by a correctional facility; or

(2) possesses a deadly weapon while in a correctional facility.

(e) It is an affirmative defense to prosecution under Subsection (b), (c), or (d)(1) that the person possessed the alcoholic beverage, controlled substance, or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the beverage, substance, or drug to a warehouse, pharmacy, or practitioner on property owned, used, or controlled by the correctional facility. It is an affirmative defense to prosecution under Subsection (d)(2) that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility who is authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

(1) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Component" means any item necessary for the current, ongoing, or future operation of a cellular telephone or other wireless communications device, including a subscriber identity module card or functionally equivalent portable memory chip, a battery or battery charger, and any number of minutes that have been purchased or for which a contract has been entered into and during which a cellular telephone or other wireless communications device is capable of transmitting or receiving communications.

(6) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14)(A), (B), or (C); or

(B) a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.

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

(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a), (b), or (c), the offense committed under Section 15.01 is a felony of the third degree.

(i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

(1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic beverage; and

(2) takes four ounces or less of an alcoholic beverage into the correctional facility and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) A person commits an offense if the person, while confined in a correctional facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices.

(k) A person commits an offense if, with the intent to provide to or make a cellular telephone or other wireless communications device or a component of one of those devices available for use by a person in the custody of a correctional facility, the person:

(1) acquires a cellular telephone or other wireless

communications device or a component of one of those devices to be delivered to the person in custody;

(2) provides a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the person in custody; or

(3) makes a payment to a communication common carrier, as defined by Article 18.20, Code of Criminal Procedure, or to any communication service that provides to its users the ability to send or receive wire or electronic communications.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 5.01, eff. Oct. 1, 1991. Renumbered from Penal Code Sec. 38.112 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 362, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 649, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 470, Sec. 1 to 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 499 (H.B. 549), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 48, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1092 (H.B. 2077), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 1169 (H.B. 3228), Sec. 1, eff. September 1, 2009.

Sec. 38.111. IMPROPER CONTACT WITH VICTIM. (a) A person commits an offense if the person, while confined in a correctional facility after being charged with or convicted of an offense listed in Article 62.001(5), Code of Criminal Procedure, contacts by letter, telephone, or any other means, either directly or through a third party, a victim of the offense or a member of the victim's family, if:

(1) the victim was younger than 17 years of age at the time of the commission of the offense for which the person is confined; and

(2) the director of the correctional facility has not, before the person makes contact with the victim:

(A) received written and dated consent to the contact

from:

- (i) a parent of the victim;
- (ii) a legal guardian of the victim;
- (iii) the victim, if the victim is 17 years of age or older at the time of giving the consent; or
- (iv) a member of the victim's family who is 17 years of age or older; and

(B) provided the person with a copy of the consent.

(b) The person confined in a correctional facility may not give the written consent required under Subsection (a)(2)(A).

(c) It is an affirmative defense to prosecution under this section that the contact was:

(1) indirect contact made through an attorney representing the person in custody; and

(2) solely for the purpose of representing the person in a criminal proceeding.

(d) An offense under this section is a Class A misdemeanor unless the actor is confined in a correctional facility after being convicted of a felony described by Subsection (a), in which event the offense is a felony of the third degree.

(e) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Added by Acts 2001, 77th Leg., ch. 1337, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 41, eff. September 1, 2007.

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING. (a) A person commits an offense if, in violation of an order issued under Chapter 7A, Code of Criminal Procedure, the person knowingly:

(1) communicates:

(A) directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or

harassing manner; or

(B) in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court;

(2) goes to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household; or

(3) possesses a firearm.

(b) 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.

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

Added by Acts 2003, 78th Leg., ch. 836, Sec. 3, eff. Sept. 1, 2003.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. 893), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. 893), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 14, eff. September 1, 2013.

Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY, COUNTY CORRECTIONAL CENTER, OR ASSIGNMENT SITE. (a) A person commits an offense if the person:

(1) is sentenced to or is required as a condition of community supervision or correctional programming to submit to a period of detention or treatment in a community corrections facility or county correctional center;

(2) fails to report to or leaves the facility, the center, or a community service assignment site as directed by the court, community supervision and corrections department supervising the person, or director of the facility or center in which the person is detained or treated, as appropriate; and

(3) in failing to report or leaving acts without the approval of the court, the community supervision and corrections department supervising the person, or the director of the facility or center in which the person is detained or treated.

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

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 12, eff. Sept. 1, 1995.

Sec. 38.114. CONTRABAND IN CORRECTIONAL FACILITY. (a) A person commits an offense if the person:

- (1) provides contraband to an inmate of a correctional facility;
- (2) otherwise introduces contraband into a correctional facility; or
- (3) possesses contraband while confined in a correctional facility.

(b) In this section, "contraband":

- (1) means:
  - (A) any item not provided by or authorized by the operator of the correctional facility; or
  - (B) any item provided by or authorized by the operator of the correctional facility that has been altered to accommodate a use other than the originally intended use; and
- (2) does not include any item specifically prohibited under Section 38.11.

(c) An offense under this section is a Class C misdemeanor, unless the offense is committed by an employee or a volunteer of the correctional facility, in which event the offense is a Class B misdemeanor.

(d) In this section, "correctional facility" means:

- (1) any place described by Section 1.07(a)(14); or
- (2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Added by Acts 2005, 79th Leg., Ch. 499 (H.B. 549), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 42, eff. September 1, 2007.

Sec. 38.12. BARRATRY AND SOLICITATION OF PROFESSIONAL EMPLOYMENT. (a) A person commits an offense if, with intent to

obtain an economic benefit the person:

- (1) knowingly institutes a suit or claim that the person has not been authorized to pursue;
- (2) solicits employment, either in person or by telephone, for himself or for another;
- (3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain employment as a professional from the prospective client;
- (4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;
- (5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or
- (6) accepts or agrees to accept money or anything of value to solicit employment.

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

- (1) knowingly finances the commission of an offense under Subsection (a);
- (2) invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a); or
- (3) is a professional who knowingly accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

(c) It is an exception to prosecution under Subsection (a) or (b) that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

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

- (1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and
- (2) with the intent to obtain professional employment for the person or for another, provides or knowingly permits to be provided to an individual who has not sought the person's employment, legal representation, advice, or care a written communication or a solicitation, including a solicitation in person or by telephone, that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the

person to whom the communication or solicitation is provided or a relative of that person and that was provided before the 31st day after the date on which the accident or disaster occurred;

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication or solicitation is directed is represented by a lawyer in the matter;

(C) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication or solicitation is provided is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication or solicitation was provided;

(D) is provided or permitted to be provided by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be contacted by or receive communications or solicitations concerning employment;

(E) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(F) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(D), a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) is a felony of the third degree.

(g) Except as provided by Subsection (h), an offense under Subsection (d) is a Class A misdemeanor.

(h) An offense under Subsection (d) is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d).

(i) Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 866, Sec. 2, eff. Sept. 1, 1989;

Acts 1993, 73rd Leg., ch. 723, Sec. 2, eff. Sept. 1, 1993; Acts

1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 750, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1252 (H.B. 148), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 315 (H.B. 1711), Sec. 3, eff. September 1, 2013.

Sec. 38.122. FALSELY HOLDING ONESELF OUT AS A LAWYER. (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

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

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 38.123. UNAUTHORIZED PRACTICE OF LAW. (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters

on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or

(5) enters into any contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 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.

Added by Acts 1973, 63rd Leg., p. 833, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, EMPLOYEE OR OFFICIAL OF CORRECTIONAL FACILITY, PAROLE OFFICER, COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICER, OR COMMISSIONED SECURITY OFFICER.

(a) In this section:

(1) "Firearm" has the meanings assigned by Section 46.01.

(2) "Stun gun" means a device designed to propel darts or

other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating a person.

(3) "Commissioned security officer" has the meaning assigned by Section 1702.002(5), Occupations Code.

(b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer the officer's, investigator's, employee's, or official's firearm, nightstick, stun gun, or personal protection chemical dispensing device with the intention of harming the officer, investigator, employee, or official or a third person.

(c) The actor is presumed to have known that the peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer was a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer if:

(1) the officer, investigator, employee, or official was wearing a distinctive uniform or badge indicating his employment; or

(2) the officer, investigator, employee, or official identified himself as a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer.

(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer who was using force against the defendant or another in excess of the amount of force permitted by law.

(e) An offense under this section is:

(1) a felony of the third degree, if the defendant took a weapon described by Subsection (b) from an officer, investigator, employee, or official described by that subsection; and

(2) a state jail felony, if the defendant attempted to take a weapon described by Subsection (b) from an officer, investigator,

employee, or official described by that subsection.

Added by Acts 1989, 71st Leg., ch. 986, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(25), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 38.17 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 322, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1201 (H.B. 582), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 394 (H.B. 1721), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 6, eff. September 1, 2011.

Sec. 38.15. INTERFERENCE WITH PUBLIC DUTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;

(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;

(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes;

(5) 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;

(6) an officer with responsibility for animal control in a county or municipality, while the officer is performing a duty or exercising authority imposed or granted under Chapter 821 or 822, Health and Safety Code; or

(7) a person who:

(A) has responsibility for assessing, enacting, or enforcing public health, environmental, radiation, or safety measures for the state or a county or municipality;

(B) is investigating a particular site as part of the person's responsibilities under Paragraph (A);

(C) is acting in accordance with policies and procedures related to the safety and security of the site described by Paragraph (B); and

(D) is performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code.

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

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code.

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(e) 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.

Added by Acts 1989, 71st Leg., ch. 1162, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(26), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 38.18 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.241, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1212 (H.B. 825), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1251 (H.B. 2703), Sec. 1, eff. September 1, 2007.

Sec. 38.151. INTERFERENCE WITH POLICE SERVICE ANIMALS. (a) In this section:

(1) "Area of control" includes a vehicle, trailer, kennel, pen, or yard.

(2) "Handler or rider" means a peace officer, corrections officer, or jailer who is specially trained to use a police service animal for law enforcement, corrections, prison or jail security, or investigative purposes.

(3) "Police service animal" means a dog, horse, or other domesticated animal that is specially trained for use by a handler or rider.

(b) A person commits an offense if the person recklessly:

(1) taunts, torments, or strikes a police service animal;

(2) throws an object or substance at a police service animal;

(3) interferes with or obstructs a police service animal or interferes with or obstructs the handler or rider of a police service animal in a manner that:

(A) inhibits or restricts the handler's or rider's control of the animal; or

(B) deprives the handler or rider of control of the animal;

(4) releases a police service animal from its area of control;

(5) enters the area of control of a police service animal without the effective consent of the handler or rider, including placing food or any other object or substance into that area;

(6) injures or kills a police service animal; or

(7) engages in conduct likely to injure or kill a police service animal, including administering or setting a poison, trap, or any other object or substance.

(c) An offense under this section is:

(1) a Class C misdemeanor if the person commits an offense

under Subsection (b)(1);

(2) a Class B misdemeanor if the person commits an offense under Subsection (b)(2);

(3) a Class A misdemeanor if the person commits an offense under Subsection (b)(3), (4), or (5);

(4) except as provided by Subdivision (5), a state jail felony if the person commits an offense under Subsection (b)(6) or (7) by injuring a police service animal or by engaging in conduct likely to injure the animal; or

(5) a felony of the second degree if the person commits an offense under Subsection (b)(6) or (7) by:

(A) killing a police service animal or engaging in conduct likely to kill the animal;

(B) injuring a police service animal in a manner that materially and permanently affects the ability of the animal to perform as a police service animal; or

(C) engaging in conduct likely to injure a police service animal in a manner that would materially and permanently affect the ability of the animal to perform as a police service animal.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. [1562](#)), Sec. 5, eff. September 1, 2007.

Sec. 38.152. INTERFERENCE WITH RADIO FREQUENCY LICENSED TO GOVERNMENT ENTITY. (a) A person commits an offense if, without the effective consent of the law enforcement agency, fire department, or emergency medical services provider, the person intentionally interrupts, disrupts, impedes, jams, or otherwise interferes with a radio frequency that is licensed by the Federal Communications Commission to a government entity and is used by the law enforcement agency, fire department, or emergency medical services provider.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a state jail felony if the actor committed the offense with the intent to:

(1) facilitate the commission of another offense; or

(2) interfere with the ability of a law enforcement agency,

a fire department, or an emergency medical services provider to respond to an emergency.

(c) In this section:

(1) "Emergency" has the meaning assigned by Section 38.15.

(2) "Emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code.

(3) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(d) 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1222 (S.B. [1273](#)), Sec. 1, eff. September 1, 2009.

Sec. 38.16. PREVENTING EXECUTION OF CIVIL PROCESS. (a) A person commits an offense if he intentionally or knowingly by words or physical action 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.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 13, eff. Sept. 1, 1995.

Sec. 38.17. FAILURE TO STOP OR REPORT AGGRAVATED SEXUAL ASSAULT OF CHILD. (a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:

(1) the actor observes the commission or attempted commission of an offense prohibited by Section 21.02 or 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;

(2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and

(3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

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

Added by Acts 1999, 76th Leg., ch. 1344, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.50, eff.  
September 1, 2007.

Sec. 38.171. FAILURE TO REPORT FELONY. (a) A person commits an offense if the person:

(1) observes the commission of a felony under circumstances in which a reasonable person would believe that an offense had been committed in which serious bodily injury or death may have resulted; and

(2) fails to immediately report the commission of the offense to a peace officer or law enforcement agency under circumstances in which:

(A) a reasonable person would believe that the commission of the offense had not been reported; and

(B) the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

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

Added by Acts 2003, 78th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2003.

Sec. 38.18. USE OF ACCIDENT REPORT INFORMATION AND OTHER INFORMATION FOR PECUNIARY GAIN. (a) This section applies to:

(1) information described by Section 550.065(a),  
Transportation Code;

(2) information reported under Chapter 772, Health and Safety Code, other than information that is confidential under that chapter; and

(3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under Chapter 772, Health and Safety Code.

(b) A person commits an offense if:

(1) the person obtains information described by Subsection (a) from the Department of Public Safety of the State of Texas or

other governmental entity; and

(2) the information is subsequently used for the direct solicitation of business or employment for pecuniary gain by:

(A) the person;

(B) an agent or employee of the person; or

(C) the person on whose behalf the information was requested.

(c) A person who employs or engages another to obtain information described by Subsection (a) from the Department of Public Safety or other governmental entity commits an offense if the person subsequently uses the information for direct solicitation of business or employment for pecuniary gain.

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

Added by Acts 2001, 77th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.19. FAILURE TO PROVIDE NOTICE AND REPORT OF DEATH OF RESIDENT OF INSTITUTION. (a) A superintendent or general manager of an institution commits an offense if, as required by Article 49.24 or 49.25, Code of Criminal Procedure, the person fails to:

(1) provide notice of the death of an individual under the care, custody, or control of or residing in the institution;

(2) submit a report on the death of the individual; or

(3) include in the report material facts known or discovered by the person at the time the report was filed.

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

Added by Acts 2003, 78th Leg., ch. 894, Sec. 4, eff. Sept. 1, 2003.

### CHAPTER 39. ABUSE OF OFFICE

Sec. 39.01. DEFINITIONS. In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

(A) imposes a duty on the public servant; or

(B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of a public servant;

(C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 39.015. CONCURRENT JURISDICTION TO PROSECUTE OFFENSES UNDER THIS CHAPTER. With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 2, eff. June 15, 2007.

Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the use of the thing misused is \$500 or more but less than \$1,500;

(4) a state jail felony if the value of the use of the

thing misused is \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the value of the use of the thing misused is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

(e) If separate transactions that violate Subsection (a)(2) are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the use of the things misused in the transactions may be aggregated in determining the classification of the offense.

(f) The value of the use of a thing of value misused under Subsection (a)(2) may not exceed:

(1) the fair market value of the thing at the time of the offense; or

(2) if the fair market value of the thing cannot be ascertained, the cost of replacing the thing within a reasonable time after the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 3241, ch. 558, Sec. 7, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.01 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 82 (S.B. 828), Sec. 1, eff. September 1, 2009.

Sec. 39.03. 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;

(2) intentionally denies or impedes another in the exercise

or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(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) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law requiring that reporting.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(34), eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 39.02 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 2, eff. September 1, 2013.

Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY. (a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the

case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the offense is committed against:

(1) an individual in the custody of the Texas Youth Commission; or

(2) a juvenile offender detained in or committed to a correctional facility the operation of which is financed primarily with state funds.

(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:

(1) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14); or

(B) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

(2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment of a juvenile offender to a facility operated by or under a contract with the Texas Youth Commission or a facility operated by or under contract with a juvenile board.

(3) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(4) "Sexual conduct" and "performance" have the meanings assigned by Section 43.25.

(5) "Sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

(f) An employee of the Texas Department of Criminal Justice, the Texas Youth Commission, or a local juvenile probation department commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the employee knows is under the supervision of the department, commission, or probation department but not in the custody of the department, commission, or probation department.

(g) An offense under Subsection (f) is a state jail felony.

(h) It is an affirmative defense to prosecution under Subsection (f) that the actor was the spouse of the individual at the time of the offense.

Added by Acts 1979, 66th Leg., p. 1383, ch. 618, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3242, ch. 558, Sec. 8, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 18, Sec. 5, eff. April 15, 1987. Renumbered from Penal Code Sec. 39.021 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1406, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 158, Sec. 1 to 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1070, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1297, Sec. 69, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 62, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 63, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 43, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 5, eff. September 1, 2009.

Sec. 39.05. 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 49.18, Code of Criminal Procedure, 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) A person commits an offense if the person is required by Section 501.055, Government Code, to:

(1) give notice of the death of an inmate and the person fails to give the notice; or

(2) conduct an investigation and file a report and the

person:

(A) fails to conduct the investigation or file the report; or

(B) fails to include in the report facts known to the person or discovered by the person in the investigation.

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

Added by Acts 1983, 68th Leg., p. 2510, ch. 441, Sec. 2, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.022 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.104, eff. Sept. 1, 1995.

Sec. 39.06. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that 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;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter

552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 3243, ch. 558, Sec. 9, eff. Sept.

1, 1983; Acts 1987, 70th Leg., ch. 30, Sec. 1, eff. Sept. 1, 1987;

Acts 1987, 70th Leg., 2nd C.S., ch. 43, Sec. 3, eff. Oct. 20, 1987;

Acts 1989, 71st Leg., ch. 927, Sec. 1, eff. Aug. 28, 1989.

Renumbered from Penal Code Sec. 39.03 and amended by Acts 1993, 73rd

Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995,

74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1995,

74th Leg., ch. 76, Sec. 14.52, eff. Sept. 1, 1995.

## **TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY**

### **CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES**

Sec. 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 other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;

(8) displays a firearm or other deadly weapon in a public

place in a manner calculated to alarm;

(9) discharges a firearm on or across a public road;

(10) 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; or

(11) for a lewd or unlawful purpose:

(A) enters on the property of another and looks into a dwelling on the property through any window or other opening in the dwelling;

(B) while on the premises of a hotel or comparable establishment, looks into a guest room not the person's own through a window or other opening in the room; or

(C) while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room that is designed to provide privacy to a person using the area.

(a-1) For purposes of Subsection (a), the term "public place" includes a public school campus or the school grounds on which a public school is located.

(b) It is a defense to prosecution under Subsection (a)(4) that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section:

(1) 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; and

(2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(7) or (a)(8), in which event it is a Class B misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a)(7) or (9) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

(f) Subsections (a)(1), (2), (3), (5), and (6) do not apply to a person who, at the time the person engaged in conduct prohibited under the applicable subdivision, was a student younger than 12 years

of age, and the prohibited conduct occurred at a public school campus during regular school hours.

(g) Noise arising from space flight activities, as defined by Section 100A.001, Civil Practice and Remedies Code, if lawfully conducted, does not constitute "unreasonable noise" for purposes of this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 181, ch. 89, Sec. 1, 2, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4641, ch. 800, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 145, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 14, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 54, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 389, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 953 (H.B. 1791), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1409 (S.B. 1114), Sec. 9, eff. September 1, 2013.

Sec. 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), 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), 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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); 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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), 42.03 (Obstructing Passageway), or 42.055 (Funeral Service Disruptions) 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), 42.03, or 42.055:

- (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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 2 (H.B. 97), Sec. 2, eff. May 19, 2006.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 42.055. FUNERAL SERVICE DISRUPTIONS. (a) In this section:

(1) "Facility" means a building at which any portion of a funeral service takes place, including a funeral parlor, mortuary, private home, or established place of worship.

(2) "Funeral service" means a ceremony, procession, or memorial service, including a wake or viewing, held in connection with the burial or cremation of the dead.

(3) "Picketing" means:

(A) standing, sitting, or repeated walking, riding, driving, or other similar action by a person displaying or carrying a banner, placard, or sign;

(B) engaging in loud singing, chanting, whistling, or yelling, with or without noise amplification through a device such as a bullhorn or microphone; or

(C) blocking access to a facility or cemetery being used for a funeral service.

(b) A person commits an offense if, during the period beginning three hours before the service begins and ending three hours after the service is completed, the person engages in picketing within 1,000 feet of a facility or cemetery being used for a funeral service.

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

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 2 (H.B. 97), Sec. 1, eff. May 19, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 256 (H.B. 1093), Sec. 1, eff. June 4, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 716 (H.B. 718), Sec. 1, eff. September 1, 2011.

Sec. 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 a public or private institution of higher education or involving a public primary or secondary school, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 4, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 910 (H.B. [1284](#)), Sec. 2, eff. June 14, 2013.

Sec. 42.061. SILENT OR ABUSIVE CALLS TO 9-1-1 SERVICE. (a) In this section "9-1-1 service" and "public safety answering point" or "PSAP" have the meanings assigned by Section 771.001, Health and Safety Code.

(b) A person commits an offense if the person makes a call to a 9-1-1 service, or requests 9-1-1 service using an electronic communications device, when there is not an emergency and knowingly or intentionally:

(1) remains silent; or

(2) makes abusive or harassing statements to a PSAP

employee.

(c) A person commits an offense if the person knowingly permits an electronic communications device, including a telephone, under the person's control to be used by another person in a manner described in Subsection (b).

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

Added by Acts 1989, 71st Leg., ch. 582, Sec. 1, eff. Sept. 1, 1989.  
Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(2), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 6, eff. September 1, 2013.

Sec. 42.062. INTERFERENCE WITH EMERGENCY REQUEST FOR ASSISTANCE. (a) An individual commits an offense if the individual knowingly prevents or interferes with another individual's ability to place an emergency call or to request assistance, including a request for assistance using an electronic communications device, in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(b) An individual commits an offense if the individual recklessly renders unusable an electronic communications device, including a telephone, that would otherwise be used by another individual to place an emergency call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(c) An offense under this section is a Class A misdemeanor, except that the offense is a state jail felony if the actor has previously been convicted under this section.

(d) In this section, "emergency" means a condition or circumstance in which any individual is or is reasonably believed by the individual making a call or requesting assistance to be in fear of imminent assault or in which property is or is reasonably believed by the individual making the call or requesting assistance to be in imminent danger of damage or destruction.

Added by Acts 2001, 77th Leg., ch. 690, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 460, Sec. 1, eff. Sept. 1, 2003;  
Acts 2003, 78th Leg., ch. 1164, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 7, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 8, eff.  
September 1, 2013.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor 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;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; or

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

(b) In this section:

(1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated by electronic mail, instant message, network call, or facsimile machine; and

(B) a communication made to a pager.

(2) "Family" and "household" have the meaning assigned by Chapter 71, Family Code.

(3) "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, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2204, ch. 411, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 10, Sec. 1, eff. March 19, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 657, Sec. 1, eff. June 14, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(d), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1222, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1278 (H.B. [1606](#)), Sec. 1, eff. September 1, 2013.

Sec. 42.072. STALKING. (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has

a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person to:

(A) fear bodily injury or death for himself or herself;

(B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

(1) the laws of another state;

(2) the laws of a federally recognized Indian tribe;

(3) the laws of a territory of the United States; or

(4) federal law.

(c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.

(d) In this section:

(1) "Dating relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Property" includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1, Sec. 1, eff. Jan. 28, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 15.02(e), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1222, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 591 (S.B. 82), Sec. 1, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1278 (H.B. 1606), Sec. 2, eff. September 1, 2013.

Sec. 42.08. ABUSE OF CORPSE. (a) A person commits an offense if the person, without legal authority, knowingly:

(1) disinters, disturbs, damages, dissects, in whole or in part, carries away, or treats in an 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;

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state; or

(5) vandalizes, damages, or treats in an offensive manner the space in which a human corpse has been interred or otherwise permanently laid to rest.

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

(c) In this section, "human corpse" includes:

(1) any portion of a human corpse;

(2) the cremated remains of a human corpse; or

(3) any portion of the cremated remains of a human corpse.

(d) 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 both sections.

(e) It is a defense to prosecution under this section that the actor:

(1) as a member or agent of a cemetery organization, removed or damaged anything that had been placed in or on any portion of the organization's cemetery in violation of the rules of the organization; or

(2) removed anything:

(A) placed in the cemetery in violation of the rules of the cemetery organization; or

(B) placed in the cemetery by or with the cemetery organization's consent but that, in the organization's judgment, had become wrecked, unsightly, or dilapidated.

(f) In this section, "cemetery" and "cemetery organization" have the meanings assigned by Section 711.001, Health and Safety

Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 42.10 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 1025 (H.B. [1012](#)), Sec. 1, eff. June 18, 2005.

Sec. 42.09. CRUELTY TO LIVESTOCK ANIMALS. (a) A person commits an offense if the person intentionally or knowingly:

- (1) tortures a livestock animal;
- (2) fails unreasonably to provide necessary food, water, or care for a livestock animal in the person's custody;
- (3) abandons unreasonably a livestock animal in the person's custody;
- (4) transports or confines a livestock animal in a cruel and unusual manner;
- (5) administers poison to a livestock animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;
- (6) causes one livestock animal to fight with another livestock animal or with an animal as defined by Section 42.092;
- (7) uses a live livestock animal as a lure in dog race training or in dog coursing on a racetrack;
- (8) trips a horse; or
- (9) seriously overworks a livestock animal.

(b) In this section:

- (1) "Abandon" includes abandoning a livestock animal in the person's custody without making reasonable arrangements for assumption of custody by another person.
- (2) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.
- (3) "Custody" includes responsibility for the health, safety, and welfare of a livestock animal subject to the person's care and control, regardless of ownership of the livestock animal.
- (4) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.
- (5) "Livestock animal" means:

(A) cattle, sheep, swine, goats, ratites, or poultry commonly raised for human consumption;

(B) a horse, pony, mule, donkey, or hinny;

(C) native or nonnative hoofstock raised under agriculture practices; or

(D) native or nonnative fowl commonly raised under agricultural practices.

(6) "Necessary food, water, or care" includes food, water, or care provided to the extent required to maintain the livestock animal in a state of good health.

(7) "Torture" includes any act that causes unjustifiable pain or suffering.

(8) "Trip" means to use an object to cause a horse to fall or lose its balance.

(c) An offense under Subsection (a)(2), (3), (4), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092. An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

(e) It is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving

livestock animals.

(g) This section does not create a civil cause of action for damages or enforcement of this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 917, ch. 342, Sec. 12, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 549, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 78, Sec. 1, eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 42.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1283, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 54, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 450, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(116), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. [2328](#)), Sec. 1, eff. September 1, 2007.

Sec. 42.091. ATTACK ON ASSISTANCE ANIMAL. (a) A person commits an offense if the person intentionally, knowingly, or recklessly attacks, injures, or kills an assistance animal.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly incites or permits an animal owned by or otherwise in the custody of the actor to attack, injure, or kill an assistance animal and, as a result of the person's conduct, the assistance animal is attacked, injured, or killed.

(c) An offense under this section is a:

(1) Class A misdemeanor if the actor or an animal owned by or otherwise in the custody of the actor attacks an assistance animal;

(2) state jail felony if the actor or an animal owned by or otherwise in the custody of the actor injures an assistance animal; or

(3) felony of the third degree if the actor or an animal owned by or otherwise in the custody of the actor kills an assistance animal.

(d) A court shall order a defendant convicted of an offense under Subsection (a) to make restitution to the owner of the

assistance animal for:

- (1) related veterinary or medical bills;
- (2) the cost of:
  - (A) replacing the assistance animal; or
  - (B) retraining an injured assistance animal by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide special equipment for or special training to an animal to help a person with a disability; and
- (3) any other expense reasonably incurred as a result of the offense.

(e) In this section:

- (1) "Assistance animal" has the meaning assigned by Section 121.002, Human Resources Code.
- (2) "Custody" has the meaning assigned by Section 42.09.

Added by Acts 2003, 78th Leg., ch. 710, Sec. 2, eff. Sept. 1, 2003.

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) In this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(6) "Livestock animal" has the meaning assigned by Section 42.09.

(7) "Necessary food, water, care, or shelter" includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(8) "Torture" includes any act that causes unjustifiable pain or suffering.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;

(2) without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;

(3) fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;

(4) abandons unreasonably an animal in the person's custody;

(5) transports or confines an animal in a cruel manner;

(6) without the owner's effective consent, causes bodily injury to an animal;

(7) causes one animal to fight with another animal, if either animal is not a dog;

(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or

(9) seriously overworks an animal.

(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09. An offense under Subsection (b)(1), (2), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

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

(1) the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101, Health and Safety Code; or

(2) the actor was engaged in bona fide experimentation for scientific research.

(e) It is a defense to prosecution under Subsection (b)(2) or (6) that:

(1) the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock

animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery; or

(2) the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with electricity transmission or distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

(g) This section does not create a civil cause of action for damages or enforcement of the section.

Added by Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. [2328](#)), Sec. 2, eff. September 1, 2007.

Sec. 42.10. DOG FIGHTING. (a) A person commits an offense if the person intentionally or knowingly:

(1) causes a dog to fight with another dog;

(2) participates in the earnings of or operates a facility used for dog fighting;

(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(4) owns or possesses dog-fighting equipment with the intent that the equipment be used to train a dog for dog fighting or in furtherance of 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:

(1) "Dog fighting" means any situation in which one dog attacks or fights with another dog.

(2) "Dog-fighting equipment" has the meaning assigned by Article 18.18(g), Code of Criminal Procedure.

(c) A conviction under Subsection (a)(2) or (3) may be had upon the uncorroborated testimony of a party to the offense.

(d) It is a defense to prosecution under Subsection (a)(1) 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.

(e) An offense under Subsection (a)(4), (5), or (6) is a Class A misdemeanor. An offense under Subsection (a)(1), (2), or (3) is a state jail felony.

Added by Acts 1983, 68th Leg., p. 1610, ch. 305, Sec. 1, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 42.111 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 644 (H.B. 916), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1357 (S.B. 554), Sec. 1, eff. September 1, 2009.

Sec. 42.105. COCKFIGHTING. (a) In this section:

(1) "Bridle" means a leather device designed to fit over the head and beak of a cock to prevent the cock from injuring another cock.

(2) "Cock" means the male of any type of domestic fowl.

(3) "Cockfighting" means any situation in which one cock attacks or fights with another cock.

(4) "Gaff" means an artificial steel spur designed to attach to the leg of a cock to replace or supplement the cock's natural spur.

(5) "Slasher" means a steel weapon resembling a curved knife blade designed to attach to the foot of a cock.

(b) A person commits an offense if the person knowingly:

(1) causes a cock to fight with another cock;

(2) participates in the earnings of a cockfight;

(3) uses or permits another to use any real estate,

building, room, tent, arena, or other property for cockfighting;

(4) owns or trains a cock with the intent that the cock be used in an exhibition of cockfighting;

(5) manufactures, buys, sells, barter, exchanges, possesses, advertises, or otherwise offers a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting; or

(6) attends as a spectator an exhibition of cockfighting.

(c) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) occurred solely for the purpose of or in support of breeding cocks for poultry shows in which a cock is judged by the cock's physical appearance; or

(2) was incidental to collecting bridles, gaffs, or slashers.

(d) An affirmative defense to prosecution is not available under Subsection (c) if evidence shows that the actor is also engaging in use of the cocks for cockfighting.

(e) It is a defense to prosecution for an offense under this section that:

(1) the actor was engaged in bona fide experimentation for scientific research; or

(2) the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or agriculture practice involving livestock animals.

(f) It is an exception to the application of Subsection (b)(6) that the actor is 15 years of age or younger at the time of the offense.

(g) An offense under Subsection (b)(1) or (2) is a state jail felony. An offense under Subsection (b)(3), (4), or (5) is a Class A misdemeanor. An offense under Subsection (b)(6) is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 952 (H.B. 1043), Sec. 1, eff. September 1, 2011.

Sec. 42.11. DESTRUCTION OF FLAG. (a) A person commits an

offense if the person intentionally or knowingly damages, defaces, mutilates, or burns the flag of the United States or the State of Texas.

(b) In this section, "flag" means an emblem, banner, or other standard or a copy of an emblem, standard, or banner that is an official or commonly recognized depiction of the flag of the United States or of this state and is capable of being flown from a staff of any character or size. The term does not include a representation of a flag on a written or printed document, a periodical, stationery, a painting or photograph, or an article of clothing or jewelry.

(c) It is an exception to the application of this section that the act that would otherwise constitute an offense is done in conformity with statutes of the United States or of this state relating to the proper disposal of damaged flags.

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

Added by Acts 1989, 71st Leg., 1st C.S., ch. 27, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 42.14 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 42.12. DISCHARGE OF FIREARM IN CERTAIN MUNICIPALITIES.

(a) A person commits an offense if the person recklessly discharges a firearm inside the corporate limits of a municipality having a population of 100,000 or more.

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

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the person may be prosecuted under either section.

(d) Subsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm.

Added by Acts 1995, 74th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1995.

Sec. 42.13. USE OF LASER POINTERS. (a) A person commits an offense if the person knowingly directs a light from a laser pointer at a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other uniformed municipal, state, or federal officer.

(b) In this section, "laser pointer" means a device that emits a visible light amplified by the stimulated emission of radiation.

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

Added by Acts 2003, 78th Leg., ch. 467, Sec. 1, eff. Sept. 1, 2003.

Sec. 42.14. ILLUMINATION OF AIRCRAFT BY INTENSE LIGHT. (a) A person commits an offense if:

(1) the person intentionally directs a light from a laser pointer or other light source at an aircraft; and

(2) the light has an intensity sufficient to impair the operator's ability to control the aircraft.

(b) It is an affirmative defense to prosecution under this section that the actor was using the light to send an emergency distress signal.

(c) An offense under this section is a Class C misdemeanor unless the intensity of the light impairs the operator's ability to control the aircraft, in which event the offense is a Class A misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) In this section, "laser pointer" has the meaning assigned by Section 42.13.

Added by Acts 2007, 80th Leg., R.S., Ch. 680 (H.B. 1586), Sec. 1, eff. September 1, 2007.

## CHAPTER 43. PUBLIC INDECENCY

### SUBCHAPTER A. PROSTITUTION

Sec. 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.

(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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1979, 66th Leg., p. 373, ch. 168, Sec. 2, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 43.02. PROSTITUTION. (a) A person commits an offense if the person 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 the person in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under this section;

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under this section; or

(3) a felony of the second degree if the person solicited is younger than 18 years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense.

(d) It is a defense to prosecution under this section that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02.

(e) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D, Chapter 12. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is previously convicted of an offense under this section if the defendant was adjudged guilty of the offense or

entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1977, 65th Leg., p. 757, ch. 286, Sec. 1, eff. May 27, 1977; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 987, Sec. 1, eff. Sept. 1, 2001.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 15, eff. September 1, 2013.

Sec. 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, except that the offense is:

- (1) a state jail felony if the actor has been previously convicted of an offense under this section; or
- (2) a felony of the second degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1977, 65th Leg., p. 758, ch. 287, Sec. 1, eff. May 27, 1977; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.  
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 16, eff. September 1, 2013.

Sec. 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, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 17, eff. September 1, 2013.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if the person knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense.

(b) An offense under Subsection (a)(1) is a felony of the second degree. An offense under Subsection (a)(2) is a felony of the first degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.03, eff. September 1, 2011.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **SUBCHAPTER B. OBSCENITY**

Sec. 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; 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1975, 64th Leg., p. 372, ch. 163, Sec. 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1974, ch. 778, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,  
1994.

Sec. 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) Except as provided by Subsection (h), an offense under Subsection (a) is a state jail felony.

(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) Except as provided by Subsection (h), an offense under Subsection (c) 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) It is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a device proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.

(h) The punishment for an offense under Subsection (a) or (c) is increased to the punishment for a felony of the second degree if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of

age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

(i) In this section, "identifiable child" means a person, recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature:

(1) who was younger than 18 years of age at the time the visual depiction was created, adapted, or modified; or

(2) whose image as a person younger than 18 years of age was used in creating, adapting, or modifying the visual depiction.

(j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1979, 66th Leg., p. 1975, ch. 778, Sec. 2, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994; Acts 2003, 78th Leg., ch. 1005, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 19, eff. September 1, 2013.

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

(1) "Minor" means an individual younger than 18 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).

(c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.

(c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 497 (H.B. [1344](#)), Sec. 1, eff. September 1, 2011.

Sec. 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 18 years of age.

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture

of the sexual performance.

(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 a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 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) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed.

(d) 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 18 years of age.

(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed.

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

(1) the defendant was the spouse of the child at the time of the offense;

(2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(3) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in

sexual conduct was younger than 18 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.

Added by Acts 1977, 65th Leg., p. 1035, ch. 381, Sec. 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1976, ch. 779, Sec. 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, Sec. 22(b), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1005, Sec. 4, 5 eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.20, eff. September 1, 2007.

Sec. 43.251. EMPLOYMENT HARMFUL TO CHILDREN. (a) In this section:

- (1) "Child" means a person younger than 18 years of age.
- (2) "Massage" has the meaning assigned to the term "massage therapy" by Section 455.001, Occupations Code.
- (3) "Massage establishment" has the meaning assigned by Section 455.001, Occupations Code.
- (4) "Nude" means a child who is:
  - (A) entirely unclothed; or
  - (B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the child is female, or any portion of the genitals or buttocks.
- (5) "Sexually oriented commercial activity" means a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the

offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

(6) "Topless" means a female child clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola.

(b) A person commits an offense if the person employs, authorizes, or induces a child to work:

(1) in a sexually oriented commercial activity; or

(2) in any place of business permitting, requesting, or requiring a child to work nude or topless.

(c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed.

Added by Acts 1987, 70th Leg., ch. 783, Sec. 1, eff. Aug. 31, 1987.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1420, Sec. 14.832, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 938 (H.B. 290), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 18, eff. September 1, 2013.

Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY. (a) A person commits an offense if:

(1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.

(d) An offense under Subsection (a) is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).

(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.

(g) An offense under Subsection (e) is a felony of the second degree.

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed or accessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to possess or access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

Added by Acts 1985, 69th Leg., ch. 530, Sec. 2, eff. Sept. 1, 1985.

Amended by Acts 1989, 71st Leg., ch. 361, Sec. 1, eff. Sept. 1, 1989;

Acts 1989, 71st Leg., ch. 968, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.51, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 933, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1415, Sec. 22(c), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 20, eff. September 1, 2013.

Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

(2) "Minor" means a person younger than 18 years of age.

(3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(4) "Promote" has the meaning assigned by Section 43.25.

(5) "Sexual conduct" has the meaning assigned by Section 43.25.

(6) "Visual material" has the meaning assigned by Section 43.26.

(b) A person who is a minor commits an offense if the person intentionally or knowingly:

(1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or

(2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

(c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:

(A) promoted the visual material with intent to harass,

annoy, alarm, abuse, torment, embarrass, or offend another; or

(B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:

(A) convicted one or more times of an offense punishable under Subdivision (1)(A); or

(B) convicted two or more times of any offense under this section.

(d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.

(e) It is an affirmative defense to prosecution under this section that the visual material:

(1) depicted only the actor or another minor:

(A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

(2) was promoted or received only to or from the actor and the other minor.

(f) It is a defense to prosecution under Subsection (b)(2) that the actor:

(1) did not produce or solicit the visual material;

(2) possessed the visual material only after receiving the material from another minor; and

(3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.

(h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is

considered a conviction for the purposes of Subsections (c) and (d).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 3, eff. September 1, 2011.

Sec. 43.27. DUTY TO REPORT. (a) For purposes of this section, "visual material" has the meaning assigned by Section 43.26.

(b) A business that develops or processes visual material and determines that the material may be evidence of a criminal offense under this subchapter shall report the existence of the visual material to a local law enforcement agency.

Added by Acts 2003, 78th Leg., ch. 1005, Sec. 6, eff. Sept. 1, 2003.

## **TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS**

### **CHAPTER 46. WEAPONS**

Sec. 46.01. 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 a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

- (A) an antique or curio firearm manufactured before

1899; or

(B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

(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) 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 opens automatically by pressure applied to a button or other device located on the handle or opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force. The term does not include a knife that has a spring, detent, or other mechanism designed to create a bias toward closure and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure and open the knife.

(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.

(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.

(14) "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 dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

(15) "Racetrack" has the meaning assigned that term by the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

(17) "Tire deflation device" means a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires. The term does not include a traffic control device that:

(A) is designed to puncture one or more of a vehicle's tires when driven over in a specific direction; and

(B) has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 917, ch. 342, Sec. 13, eff. Sept.

1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 1, eff. Sept.

1, 1983; Acts 1983, 68th Leg., p. 4830, ch. 852, Sec. 1, eff. Sept.

1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(46), eff. Sept.

1, 1987; Acts 1989, 71st Leg., ch. 749, Sec. 1, eff. Sept. 1, 1989;

Acts 1991, 72nd Leg., ch. 229, Sec. 1, eff. Sept. 1, 1991; Acts

1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999,

76th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12A.001, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1199 (H.B. 4456), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 1, eff. September 1, 2011.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun, illegal knife, or club if the person is not:

(1) on the person's own premises or premises under the person's control; or

(2) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating;

(B) prohibited by law from possessing a firearm; or

(C) a member of a criminal street gang, as defined by Section 71.01.

(a-2) For purposes of this section, "premises" includes real property and a recreational vehicle that is being used as living quarters, regardless of whether that use is temporary or permanent. In this subsection, "recreational vehicle" means a motor vehicle primarily designed as temporary living quarters or a vehicle that contains temporary living quarters and is designed to be towed by a motor vehicle. The term includes a travel trailer, camping trailer, truck camper, motor home, and horse trailer with living quarters.

(a-3) For purposes of this section, "watercraft" means any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, used or capable of being used for transportation

on water.

(b) Except as provided by 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 the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 109, ch. 49, Sec. 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, Sec. 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1879, ch. 746, Sec. 26, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2273, ch. 552, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5113, ch. 931, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 262, Sec. 21, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 873, Sec. 25, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 168, Sec. 1, eff. Sept. 1, 1991.

Redesignated from Penal Code Sec. 46.02, 46.03 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 16, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 754, Sec. 15, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 16, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 998, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 1, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. 1815), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 679 (H.B. 25), Sec. 1, eff. September 1, 2011.

Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored

by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is 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 early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport; or

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while 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, or an officer of the court.

(c) In this section:

(1) "Premises" has the meaning assigned by Section 46.035.

(2) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Private Security Board if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) a security officer who holds a personal protection authorization under Chapter 1702, Occupations Code, provided that the officer is either:

(A) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's firearm in plain view; or

(B) not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.

(f) It is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code.

(g) An offense under this section is a third degree felony.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

- (1) the actor is wearing a distinctive uniform; and
- (2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

- (1) while in a vehicle being driven on a public road; or
- (2) at the actor's residence or place of employment.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 2962, ch. 508, Sec. 1, eff. Aug.

29, 1983; Acts 1989, 71st Leg., ch. 749, Sec. 2, eff. Sept. 1, 1989;

Acts 1991, 72nd Leg., ch. 203, Sec. 2.79; Acts 1991, 72nd Leg., ch.

386, Sec. 71, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 433,

Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 554, Sec. 50,

eff. Sept. 1, 1991. Renumbered from Penal Code Sec. 46.04 and

amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 3, eff. Sept.

1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 42, eff. May 30, 1995;

Acts 1995, 74th Leg., ch. 318, Sec. 17, eff. Sept. 1, 1995; Acts

1995, 74th Leg., ch. 790, Sec. 17, eff. Sept. 1, 1995; Acts 1997,

75th Leg., ch. 165, Sec. 10.03, 31.01(70), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 2, 3, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1060, Sec. 1, 2 eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1178, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.21, eff. September 1, 2009.

Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER.

(a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place.

(b) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, on or about the license holder's person:

(1) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(2) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event;

(3) on the premises of a correctional facility;

(4) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242, Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home administration, as appropriate;

(5) in an amusement park; or

(6) on the premises of a church, synagogue, or other

established place of religious worship.

(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed, at any meeting of a governmental entity.

(d) A license holder commits an offense if, while intoxicated, the license holder carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed.

(e) A license holder who is licensed as a security officer under Chapter 1702, Occupations Code, and employed as a security officer commits an offense if, while in the course and scope of the security officer's employment, the security officer violates a provision of Subchapter H, Chapter 411, Government Code.

(f) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(2) "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3) "Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(g) An offense under Subsection (a), (b), (c), (d), or (e) is a Class A misdemeanor, unless the offense is committed under Subsection (b)(1) or (b)(3), in which event the offense is a felony of the third degree.

(h) It is a defense to prosecution under Subsection (a) that the actor, at the time of the commission of the offense, displayed the handgun under circumstances in which the actor would have been justified in the use of force or deadly force under Chapter 9.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1214

(H.B. 1889), Sec. 2

(h-1) It is a defense to prosecution under Subsections (b) and (c) that the actor, at the time of the commission of the offense, was:

- (1) an active judicial officer, as defined by Section 411.201, Government Code; or
- (2) a bailiff designated by the active judicial officer and engaged in escorting the officer.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1222  
(H.B. 2300), Sec. 5

(h-1) It is a defense to prosecution under Subsections (b)(1), (2), and (4)-(6), and (c) that at the time of the commission of the offense, the actor was:

- (1) a judge or justice of a federal court;
- (2) an active judicial officer, as defined by Section 411.201, Government Code; or
- (3) a district attorney, assistant district attorney, criminal district attorney, assistant criminal district attorney, county attorney, or assistant county attorney.
  - (i) Subsections (b)(4), (b)(5), (b)(6), and (c) do not apply if the actor was not given effective notice under Section 30.06.
  - (j) Subsections (a) and (b)(1) do not apply to a historical reenactment performed in compliance with the rules of the Texas Alcoholic Beverage Commission.
  - (k) It is a defense to prosecution under Subsection (b)(1) that the actor was not given effective notice under Section 411.204, Government Code.

Added by Acts 1995, 74th Leg., ch. 229, Sec. 4, eff. Sept. 1, 1995.  
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 10.04, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 26, 27, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.833, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 976 (H.B. 1813), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1214 (H.B. 1889), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222 (H.B. 2300), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 687 (H.B. 2664), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 72 (S.B. 299), Sec. 1, eff. September 1, 2013.

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM. (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or

(2) the date of the person's release from community supervision following conviction of the misdemeanor.

(c) A person, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Chapter 7A, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) or (c) is a Class A misdemeanor.

(f) For the purposes of this section, an offense under the laws of this state, another state, or the United States is, except as provided by Subsection (g), a felony if, at the time it is committed,

the offense:

- (1) is designated by a law of this state as a felony;
- (2) contains all the elements of an offense designated by a law of this state as a felony; or
- (3) is punishable by confinement for one year or more in a penitentiary.

(g) An offense is not considered a felony for purposes of Subsection (f) if, at the time the person possesses a firearm, the offense:

- (1) is not designated by a law of this state as a felony;
- and
- (2) does not contain all the elements of any offense designated by a law of this state as a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 46.05 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., ch. 23, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 836, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. [2730](#)), Sec. 11.24, eff. September 1, 2009.

Sec. 46.041. UNLAWFUL POSSESSION OF METAL OR BODY ARMOR BY FELON. (a) In this section, "metal or body armor" means any body covering manifestly designed, made, or adapted for the purpose of protecting a person against gunfire.

(b) A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor.

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

Added by Acts 2001, 77th Leg., ch. 452, Sec. 1, eff. Sept. 1, 2001.

Sec. 46.05. PROHIBITED WEAPONS. (a) A person commits an offense if the person 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) knuckles;
- (6) armor-piercing ammunition;
- (7) a chemical dispensing device;
- (8) a zip gun; or
- (9) a tire deflation 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 correctional facility.

(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.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a short-barrel firearm or tire deflation device solely as an antique or curio;

(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); or

(3) was incidental to dealing with a tire deflation device solely for the purpose of making the device available to an organization, agency, or institution listed in Subsection (b).

(e) An offense under Subsection (a)(1), (2), (3), (4), (6), (7), or (8) is a felony of the third degree. An offense under Subsection (a)(9) is a state jail felony. An offense under Subsection (a)(5) is a Class A misdemeanor.

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor is a security officer and has received training on the use of the chemical dispensing device by a training program that is:

(1) provided by the Texas Commission on Law Enforcement; or

(2) approved for the purposes described by this subsection by the Texas Private Security Board of the Department of Public Safety.

(g) In Subsection (f), "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or

a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 15, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 2, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(47), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 229, Sec. 2, eff. Sept. 1, 1991; Renumbered from Penal Code Sec. 46.06 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1071, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1035 (H.B. [1132](#)), Sec. 2.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1278 (H.B. [2303](#)), Sec. 7, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. [1416](#)), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. [686](#)), Sec. 2.60, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 960 (H.B. [1862](#)), Sec. 1, eff. September 1, 2013.

Sec. 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if the person:

(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, club, or illegal knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered; or

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.

(b) In this section:

(1) "Intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(2) "Active protective order" means a protective order issued under Title 4, Family Code, that is in effect. The term does not include a temporary protective order issued before the court holds a hearing on the matter.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) 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, except that an offense under Subsection (a)(2) is a state jail felony if the weapon that is the subject of the offense is a handgun.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1985, 69th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 46.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 324, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1193, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(f), eff. Sept. 1, 1999.

Sec. 46.07. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in another state. This

authorization is enacted in conformance with 18 U.S.C. Section 922(b)(3)(A).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 46.08 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 280 (S.B. 1188), Sec. 1, eff. May 30, 2009.

Sec. 46.08. 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.

Added by Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 3, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.09. 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.

Added by Acts 1983, 68th Leg., p. 4832, ch. 852, Sec. 4, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.10 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.10. DEADLY WEAPON IN PENAL INSTITUTION. (a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

(1) carries on or about his person a deadly weapon; or  
 (2) possesses or conceals a deadly weapon in the penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

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

Added by Acts 1985, 69th Leg., ch. 46, Sec. 1, eff. Sept. 1, 1985.  
 Amended by Acts 1987, 70th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1987.  
 Renumbered from Penal Code Sec. 46.11 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.11. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE SCHOOL ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

- (1) within 300 feet of the premises of a school; or
- (2) on premises where:
  - (A) an official school function is taking place; or
  - (B) an event sponsored or sanctioned by the University Interscholastic League is taking place.

(b) This section does not apply to an offense under Section 46.03(a)(1).

(c) In this section:

(1) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2) "School" means a private or public elementary or secondary school.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 1, eff. Sept. 1, 1995.  
 Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 10, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.002, eff. September 1, 2011.

Sec. 46.12. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 2, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.004, eff. September 1, 2005.

Sec. 46.13. MAKING A FIREARM ACCESSIBLE TO A CHILD. (a) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Readily dischargeable firearm" means a firearm that is loaded with ammunition, whether or not a round is in the chamber.

(3) "Secure" means to take steps that a reasonable person would take to prevent the access to a readily dischargeable firearm by a child, including but not limited to placing a firearm in a locked container or temporarily rendering the firearm inoperable by a trigger lock or other means.

(b) A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence:

(1) failed to secure the firearm; or

(2) left the firearm in a place to which the person knew or should have known the child would gain access.

(c) It is an affirmative defense to prosecution under this section that the child's access to the firearm:

(1) was supervised by a person older than 18 years of age and was for hunting, sporting, or other lawful purposes;

(2) consisted of lawful defense by the child of people or property;

(3) was gained by entering property in violation of this code; or

(4) occurred during a time when the actor was engaged in an agricultural enterprise.

(d) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) An offense under this section is a Class A misdemeanor if the child discharges the firearm and causes death or serious bodily injury to himself or another person.

(f) A peace officer or other person may not arrest the actor before the seventh day after the date on which the offense is committed if:

(1) the actor is a member of the family, as defined by Section 71.003, Family Code, of the child who discharged the firearm; and

(2) the child in discharging the firearm caused the death of or serious injury to the child.

(g) A dealer of firearms shall post in a conspicuous position on the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height:

"IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO

## THE FIREARM."

Added by Acts 1995, 74th Leg., ch. 83, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 15.02(g), eff. Sept. 1, 1999.

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct:

(1) on more than one occasion; or

(2) for profit or any other form of remuneration.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2009, 81st Leg., R.S., Ch. 153 (S.B. [2225](#)), Sec. 1, eff. September 1, 2009.

Sec. 46.15. NONAPPLICABILITY. (a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers and neither section prohibits an

officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer, qualified retired law enforcement officer, federal criminal investigator, or former reserve law enforcement officer who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is:

(A) an honorably retired peace officer;

(B) a qualified retired law enforcement officer;

(C) a federal criminal investigator; or

(D) a former reserve law enforcement officer who has served in that capacity not less than a total of 15 years with one or more state or local law enforcement agencies;

(6) a district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a concealed handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a concealed handgun under Chapter

411, Government Code; and

(B) engaged in escorting the judicial officer; or

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code.

(b) Section 46.02 does not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 437.001, Government Code, or as a guard employed by a penal institution;

(2) is traveling;

(3) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;

(4) holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;

(5) acts as a personal protection officer and carries the person's security officer commission and personal protection officer authorization, if the person:

(A) is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B) is either:

(i) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view; or

(ii) not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner;

(6) is carrying a concealed handgun and a valid license issued under Subchapter H, Chapter 411, Government Code, to carry a concealed handgun;

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed

premises; or

(8) is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A) on the immediate premises where the activity is conducted; or

(B) en route between those premises and the person's residence and is carrying the weapon unloaded.

(c) The provision of Section 46.02 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 subsection, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.

(d) The provisions of Section 46.02 prohibiting the carrying of a firearm or carrying of a club do not apply to a public security officer employed by the adjutant general under Section 437.053, Government Code, in performance of official duties or while traveling to or from a place of duty.

(e) The provisions of Section 46.02 prohibiting the carrying of an illegal knife do not apply to an individual carrying a bowie knife or a sword used in a historical demonstration or in a ceremony in which the knife or sword is significant to the performance of the ceremony.

(f) Section 46.03(a)(6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces or state military forces, as defined by Section 437.001, Government Code; or

(2) an employee of a penal institution.

(g) The provisions of Sections 46.02 and 46.03 prohibiting the possession or carrying of a club do not apply to an animal control officer who holds a certificate issued under Section 829.006, Health and Safety Code, and who possesses or carries an instrument used specifically for deterring the bite of an animal while the officer is in the performance of official duties under the Health and Safety Code or is traveling to or from a place of duty.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(1),

eff. September 1, 2007.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(2), eff. September 1, 2007.

(j) The provisions of Section 46.02 prohibiting the carrying of a handgun do not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 18, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1221, Sec. 4, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1445, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1060, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 325, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 421, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 795, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 288 (H.B. [823](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. [2018](#)), Sec. 23.001(78), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 976 (H.B. [1813](#)), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093 (H.B. [2110](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093 (H.B. [2110](#)), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. [578](#)), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. [578](#)), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 647 (H.B. [964](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. [1815](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. [1815](#)), Sec. 3(1), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. [1815](#)), Sec. 3(2), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(62), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1214 (H.B. 1889), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222 (H.B. 2300), Sec. 6, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.004, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 299 (H.B. 405), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 794 (S.B. 1237), Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.22, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 679 (H.B. 25), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 13.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1080 (H.B. 3370), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. 3142), Sec. 13, eff. June 14, 2013.

#### CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement to win or lose something of value solely or partially by chance. A bet does not include:

(A) contracts of indemnity or guaranty, or life, health, property, or accident insurance;

(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; or

(C) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest

conducted at a carnival sponsored by a nonprofit religious, fraternal, school, law enforcement, youth, agricultural, or civic group, including any nonprofit agricultural or civic group incorporated by the state before 1955, if the person to receive the merchandise from the proprietor is the person who performs the carnival contest.

(2) "Bookmaking" means:

(A) to receive and record or to forward more than five bets or offers to bet in a period of 24 hours;

(B) to receive and record or to forward bets or offers to bet totaling more than \$1,000 in a period of 24 hours; or

(C) a scheme by three or more persons to receive, record, or forward a bet or an offer to bet.

(3) "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, bookmaking, or the conducting of a lottery or the playing of gambling devices.

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

(5) "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 or designed to enhance the actor's chances of winning.

(6) "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.

(7) "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.

(8) "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.

(9) "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, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1987, 70th Leg., ch. 313, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 396, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 774, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 19, eff. Sept. 1, 1995.

Sec. 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, balls, or any other gambling device.

(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:

(1) was permitted under Chapter 2001, Occupations Code;  
 (2) was permitted under Chapter 2002, Occupations Code;  
 (3) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Chapter 466, Government Code);

(4) was permitted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); or

(5) consisted entirely of participation in a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

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

(e) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance excluded from the definition of "gambling device" under Section 47.01(4)(B).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1981, 67th Leg., 1st C.S., p. 101, ch. 11, Sec. 43, eff. Nov. 10, 1981; Acts 1989, 71st Leg., ch. 957, Sec. 2, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 3; Acts 1993, 73rd Leg., ch. 107, Sec. 4.04, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 774, Sec. 2, eff. Aug. 30, 1993. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.53, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 931, Sec. 79, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 124, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.834, eff. Sept. 1, 2001.

Sec. 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) engages in bookmaking;

(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 Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1987, 70th Leg., ch. 313, Sec. 3, eff. Sept. 1, 1987;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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 gambling occurred 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) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1977, 65th Leg., p. 667, ch. 251, Sec. 1, eff. Aug.

29, 1977. Acts 1989, 71st Leg., ch. 1030, Sec. 1, eff. Sept. 1,

1989. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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) It is an exception to the application of Subsection (a) that the information communicated is intended for use in placing a lawful wager under Article 11, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), and is not communicated in violation of Section 14.01 of that Act.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, 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.

(c) A person commits an offense if, with the intent to further gambling, the person knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(d) It is a defense to prosecution under Subsections (a) and (c) that:

(1) the device, equipment, or paraphernalia is used for or is intended for use in gambling that is to occur entirely in a private place;

(2) a person involved in the gambling does not receive any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the chance

of winning is the same for all participants.

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

(f) It is a defense to prosecution under Subsection (a) or (c) that the person owned, manufactured, transferred, or possessed the gambling device, equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the device, equipment, or paraphernalia was legal.

(g) A district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment or paraphernalia on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 668, ch. 251, Sec. 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, Sec. 1, eff. Aug. 29, 1977; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(48), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 458, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1030, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 44, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 315, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 4; Acts 1993, 73rd Leg., ch. 107, Sec. 4.05, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 284, Sec. 30, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.07. EVIDENCE. 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, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 47.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.08. 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, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 47.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.09. OTHER DEFENSES. (a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) Chapter 2001, Occupations Code;

(B) Chapter 2002, Occupations Code; or

(C) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes);

(2) consisted entirely of participation in the state lottery authorized by Chapter 466, Government Code; or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by:

(A) Chapter 466, Government Code;

(B) the lottery division of the Texas Lottery Commission;

(C) the Texas Lottery Commission; or

(D) the director of the lottery division of the Texas Lottery Commission.

(b) It is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c) that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state 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, equipment, or 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) at all times while the vessel is in the territorial waters of this state all devices, equipment, or paraphernalia are disabled, electronically or by another method, from a remote and secured area of the vessel in a manner that allows only the master or crew of the vessel to remove any disabling device;

(3) at all times while the vessel is in the territorial waters of this state any disabling device is not removed except for the purposes of inspecting or repairing the device, equipment, or paraphernalia; and

(4) the device, equipment, or paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.54, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 111, Sec. 1, eff. May 16, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 55, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 844, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.835, eff. Sept. 1, 2001.

Sec. 47.10. AMERICAN DOCUMENTATION OF VESSEL REQUIRED. If 18 U.S.C. Section 1082 is repealed, the affirmative defenses provided by Section 47.09(b) apply only if the vessel is documented under the laws of the United States.

Added by Acts 1989, 71st Leg., ch. 1030, Sec. 4, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 47.12 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(27), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 47.13 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH**

Sec. 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 541.201, Transportation Code, 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 or public place and that an offense is punishable by a fine not to exceed \$500.

(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.

Added by Acts 1975, 64th Leg., p. 744, ch. 290, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.242, eff. Sept. 1, 1997.

Sec. 48.015. PROHIBITIONS RELATING TO CERTAIN CIGARETTES. (a) A person may not acquire, hold, own, possess, or transport for sale or distribution in this state or import or cause to be imported into this state for sale or distribution in this state:

(1) cigarettes that do not comply with all applicable requirements imposed by or under federal law and implementing regulations; or

(2) cigarettes to which stamps may not be affixed under Section 154.0415, Tax Code, other than cigarettes lawfully imported

or brought into the state for personal use and cigarettes lawfully sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with 19 U.S.C. Section 1555(b), as amended.

(b) A person who commits an act prohibited by Subsection (a), knowing or having reason to know that the person is doing so, is guilty of a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1104, Sec. 6, eff. Sept. 1, 2001.

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS. (a) "Human organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, fetal tissue, or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents.

(b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.

(c) It is an exception to the application of this section that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) A violation of this section is a Class A misdemeanor.

Added by Acts 1985, 69th Leg., ch. 40, Sec. 1, eff. Aug. 26, 1985.  
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES**

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

- (B) 100 milliliters of blood; or
- (C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

(5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 234, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1364, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1420, Sec. 14.707, eff. Sept. 1, 2001.

Sec. 49.02. PUBLIC INTOXICATION. (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(a-1) For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor

committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 68 (S.B. 904), Sec. 25, eff. September 1, 2007.

Sec. 49.031. POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE.

(a) In this section:

(1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

(2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

(A) a glove compartment or similar storage container that is locked;

(B) the trunk of a vehicle; or

(C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

(3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

(b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:

(1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for

compensation, including a bus, taxicab, or limousine; or

(2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

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

(e) A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

Added by Acts 2001, 77th Leg., ch. 969, Sec. 2, eff. Sept. 1, 2001.

Sec. 49.04. DRIVING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

(b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

(d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.55, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. [1199](#)), Sec. 2, eff. September 1, 2011.

## Sec. 49.045. DRIVING WHILE INTOXICATED WITH CHILD PASSENGER.

(a) A person commits an offense if:

- (1) the person is intoxicated while operating a motor vehicle in a public place; and
- (2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

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

Added by Acts 2003, 78th Leg., ch. 787, Sec. 1, eff. Sept. 1, 2003.

Sec. 49.05. FLYING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.06. BOATING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.065. ASSEMBLING OR OPERATING AN AMUSEMENT RIDE WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an amusement ride or while assembling a mobile amusement ride.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this

section that at the time of the offense the person operating the amusement ride or assembling the mobile amusement ride had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor with a minimum term of confinement of six days.

Added by Acts 1999, 76th Leg., ch. 1364, Sec. 9, eff. Jan. 1, 2000.

Sec. 49.07. INTOXICATION ASSAULT. (a) A person commits an offense if the person, by accident or mistake:

(1) while operating an aircraft, watercraft, or amusement ride while intoxicated, or while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another; or

(2) as a result of assembling a mobile amusement ride while intoxicated causes serious bodily injury to another.

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

(c) Except as provided by Section 49.09, an offense under this section is a felony of the third degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 10, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. [1212](#)), Sec. 2, eff. September 1, 2007.

Sec. 49.08. INTOXICATION MANSLAUGHTER. (a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) Except as provided by Section 49.09, an offense under this section is a felony of the second degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 11, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. [1212](#)), Sec. 3, eff. September 1, 2007.

Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. (a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) An offense under Section 49.04, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:

(1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(b-1) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty.

(b-2) An offense under Section 49.08 is a felony of the first degree if it is shown on the trial of the offense that the person caused the death of a person described by Subsection (b-1).

(b-3) For the purposes of Subsection (b-1):

(1) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Firefighter" means:

(A) an individual employed by this state or by a political or legal subdivision of this state who is subject to certification by the Texas Commission on Fire Protection; or

(B) a member of an organized volunteer fire-fighting unit that:

(i) renders fire-fighting services without remuneration; and

(ii) conducts a minimum of two drills each month, each at least two hours long.

(b-4) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state.

(c) For the purposes of this section:

(1) "Offense relating to the operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04 or 49.045;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;

(C) an offense under Article 67011-1, Revised Statutes, as that law existed before September 1, 1994;

(D) an offense under Article 67011-2, Revised Statutes, as that law existed before January 1, 1984;

(E) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a motor vehicle; or

(F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;

(C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or

(E) an offense under the laws of another state that

prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

- (A) an offense under Section 49.06;
- (B) an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;
- (C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;
- (D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or
- (E) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(4) "Offense of operating or assembling an amusement ride while intoxicated" means:

- (A) an offense under Section 49.065;
- (B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or
- (C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(f) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical

the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Section 13(i), Article 42.12, Code of Criminal Procedure, this subsection controls.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1364, Sec. 12, 13, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 648, Sec. 1, 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 969, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 787, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(117), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. 1199), Sec. 3, eff. September 1, 2011.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.03, 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 14, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 787, Sec. 3, eff. Sept. 1, 2003.

Sec. 49.11. PROOF OF MENTAL STATE UNNECESSARY. (a) Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.

(b) Subsection (a) does not apply to an offense under Section 49.031.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 22, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 969, Sec. 4, eff. Sept. 1, 2001.

Sec. 49.12. APPLICABILITY TO CERTAIN CONDUCT. Sections 49.07 and 49.08 do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.05, eff. Sept. 1, 2003.

**TITLE 11. ORGANIZED CRIME**  
**CHAPTER 71. ORGANIZED CRIME**

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three 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.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02.

(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1989, 71st Leg., ch. 782, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 23, eff. Sept. 1, 1995.

Sec. 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 or as a member of a criminal street gang, the person 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, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(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;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05; or

(18) any offense classified as a felony under the Tax Code.

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by

Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; or

(2) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1).

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed, unless the defendant is convicted of conspiring to commit the offense, in which event the offense is one category lower than the most serious offense that the defendant conspired to commit.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2373, ch. 587, Sec. 1 to 3, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 782, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 761, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 24, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 189, Sec. 9, eff. May 21, 1997; Acts 1999, 76th Leg., ch. 685, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 641, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. [3376](#)), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1163 (H.B. [126](#)), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 153 (S.B. [2225](#)), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1357 (S.B. 554), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.003, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 223 (H.B. 260), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 16.005, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1325 (S.B. 549), Sec. 4(b), eff. September 1, 2013.

Sec. 71.021. VIOLATION OF COURT ORDER ENJOINING ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if the person knowingly violates a temporary or permanent order issued under Section 125.065(a) or (b), Civil Practice and Remedies Code.

(b) 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.

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

Added by Acts 1995, 74th Leg., ch. 584, Sec. 1, eff. Sept. 1, 1995.

Sec. 71.022. COERCING, INDUCING, OR SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG. (a) A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang which, as a

condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

(a-1) A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person:

(1) threatens the child or a member of the child's family with imminent bodily injury; or

(2) causes bodily injury to the child or a member of the child's family.

(b) Except as provided by Subsection (c), an offense under this section is a felony of the third degree.

(c) A second or subsequent offense under this section is a felony of the second degree.

(d) In this section:

(1) "Child" means an individual younger than 17 years of age.

(2) "Family" has the meaning assigned by Section 71.003, Family Code.

Added by Acts 1999, 76th Leg., ch. 1555, Sec. 1, eff. Sept. 1, 1999.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 435 (H.B. 2187), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 435 (H.B. 2187), Sec. 2, eff. September 1, 2009.

#### Sec. 71.023. DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS.

(a) A person commits an offense if the person, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, one or more of the following offenses by members of a criminal street gang:

(1) a felony offense that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(2) a felony offense for which it is shown that a deadly weapon, as defined by Section 1.07, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3) an offense that is punishable under Section 481.112(e), 481.112(f), 481.1121(b)(4), 481.115(f), or 481.120(b)(6), Health and Safety Code.

(b) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1325 (S.B. 549), Sec. 5, eff. September 1, 2013.

Sec. 71.028. GANG-FREE ZONES. (a) In this section:

(1) "Institution of higher education," "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(2) "Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

(b) This section applies to an offense listed in Section 71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a motor vehicle, or unauthorized use of a motor vehicle.

(c) Except as provided by Subsection (d), the punishment prescribed for an offense described by Subsection (b) is increased to the punishment prescribed for the next highest category of offense if the actor is 17 years of age or older and it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was:

(1) in, on, or within 1,000 feet of any:

(A) real property that is owned, rented, or leased by a school or school board;

(B) premises owned, rented, or leased by an institution of higher education;

(C) premises of a public or private youth center; or

(D) playground;

(2) in, on, or within 300 feet of any:

- (A) shopping mall;
  - (B) movie theater;
  - (C) premises of a public swimming pool; or
  - (D) premises of a video arcade facility; or
- (3) on a school bus.

(d) The punishment for an offense described by Subsection (b) may not be increased under this section if the offense is punishable under Section 71.02 as a felony of the first degree.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.

Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 71.028, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of gang-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those zones if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those zones.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the zone is located.

(d) This section does not prevent the prosecution from:

- (1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 71.028; or
- (2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 that:

- (1) one or more members of the combination are not criminally responsible for the object 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; or
- (4) once the initial combination of three 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.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 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.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 71.05. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's criminal objective, the actor withdrew from the combination before commission of an offense listed in Section 71.02(a) and took further affirmative action that prevented the commission of the offense.

(b) For the purposes of this section and Subsection (d) of

Section 71.02, 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 Section 71.02(a) and made substantial effort to prevent the commission of an offense listed in Section 71.02(a) shall be admissible as mitigation at the hearing on punishment if the actor has been found guilty under Section 71.02, 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.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2374, ch. 587, Sec. 4, 5, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 761, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 6, eff. September 1, 2011.