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COBB

H.B. No. 419

A BILL TO BE ENTITLED

AN ACT

reforming the penal law; enacting a new Penal Code setting out general principles, defining offenses, and affixing punishments; making necessary conforming amendments to outside laws; repealing replaced laws; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. ADOPTION OF CODE. A new Penal Code is adopted to read as follows:

TITLE 1. INTRODUCTORY PROVISIONS

Chapter 1. General Provisions
2. Burden of Proof
3. Multiple Prosecutions and Double Jeopardy

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

Chapter 6. Culpability Generally
7. Criminal Responsibility for Conduct of Another
8. General Defenses to Criminal Responsibility
9. Justification Excluding Criminal Responsibility

TITLE 3. PUNISHMENTS

Chapter 12. Punishments

TITLE 4. INCHOATE OFFENSES

Chapter 15. Preparatory Offenses
16. Criminal Instruments

TITLE 5. OFFENSES AGAINST THE PERSON

Chapter 19. Criminal Homicide
20. Kidnapping and False Imprisonment
21. Sexual Offenses
22. Assaultive Offenses

TITLE 6. OFFENSES AGAINST THE FAMILY

Chapter 25. Offenses Against the Family

TITLE 7. OFFENSES AGAINST PROPERTY

Chapter 28. Arson and Other Property Damage or Destruction
29. Robbery
30. Burglary and Criminal Trespass
31. Theft
32. Fraud

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

Chapter 36. Bribery and Corrupt Influence
37. Perjury and Other Falsification
38. Obstructing Governmental Operation
39. Abuse of Office

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

Chapter 42. Disorderly Conduct and Related Offenses
43. Public Indecency

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

Chapter 46. Weapons
47. Gambling
48. Drugs

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section
1.01 Short Title
1.02 Objectives of Code
1.03 Effect of Code
1.04 Territorial Jurisdiction
1.05 Construction of Code
1.06 Computation of Age
1.07 Code Definitions

Sec. 1.01. SHORT TITLE.

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

Sec. 1.02. OBJECTIVES OF CODE.

The general objectives of this code are:

(1) to proscribe and prevent conduct that unjustifiably and inexcusably causes or threatens harm to individual, property, or public interests for which protection through the criminal law is appropriate;

(2) to give fair warning of what conduct is prohibited, and to guide and limit the exercise of official discretion in law enforcement, by adequately defining the act and culpable mental state that constitute an offense;

(3) to give fair warning of the consequences of violation, and to guide and limit the exercise of official discretion in punishment, by grading of offenses;

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

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

(6) to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

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 commissioner's court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1-3 (general principles of penal law) of this code apply to offenses defined by other laws unless this code provides otherwise.

(c) This code does not bar, suspend, or otherwise affect any 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.

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 within this state; or

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

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

(4) the conduct within 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 law 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 within 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.

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 2.01, 2.02, 2.04, 2.05, 3.01-3.10, and 3.12 of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to the construction of this code.

Sec. 1.06. COMPUTATION OF AGE.

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

Sec. 1.07. CODE DEFINITIONS.

(a) In this code, unless the context requires a different definition:

(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.

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

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

(5) "Association" means:

(A) a government or governmental subdivision or agency; or

(B) a trust or partnership, whether created or operated for profit or not for profit; or

(C) a group or organization of two or more persons having a joint or common economic interest or jointly or commonly promoting their individual economic interests, whether the group or organization was created or is operated for profit or not for profit.

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

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

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

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

(10) "Conviction" means a final adjudication by a court of competent jurisdiction that a defendant committed an offense, although the imposition or execution of sentence was suspended, if the judgment has not been reversed or

set aside, the time for appealing the judgment has expired, and the defendant has not been pardoned on the ground of innocence. There is deemed to be no conviction if imposition of defendant's sentence was probated and he successfully complied with the conditions and period of probation. Judgments of guilt of offenses arising out of the same criminal episode obtained in a single criminal action are deemed to constitute a single conviction.

(11) "Corporation" includes nonprofit corporation, joint stock company, and professional association.

(12) "Criminal negligence" is defined in Section 6.05 (culpable mental states).

(13) "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.

(14) "Effective consent" includes consent by any person legally authorized to act for the person whose consent is in issue. Consent is not effective if:

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

(B) 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

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

(15) "Element of offense" means:

(A) the conduct, circumstances surrounding the conduct, or result of the conduct described in the definition of the offense; and

(B) the culpable mental state required; and

(C) an exception to the offense; and

(D) a defense as to which supporting evidence has been admitted.

(16) "Felony" means an offense so designated by law or punishable by death or imprisonment in a penitentiary for more than one year.

(17) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of springs or expanding gas, or any device readily convertible to that use.

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

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

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

(21) "Intentional" is defined in Section 6.05 (culpable mental states).

(22) "Knowing" is defined in Section 6.05 (culpable mental states).

(23) "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.

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

(25) "Oath" includes affirmation.

(26) "Omission" means failure to act.

(27) "Peace officer" means a public servant who has a duty imposed by statute:

(A) to maintain public order; or

(B) to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; or

(C) to investigate the commission or suspected commission of offenses.

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

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

(30) "Possess" means to exercise actual care, control, and management over a thing.

(31) "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; or

(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 he is participating in performing 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 claim of right although he is not legally qualified to do so.

(32) "Reasonable belief" means a belief not formed recklessly or with criminal negligence.

(33) "Reckless" is defined in Section 6.05 (culpable mental states).

(34) "Rule" includes regulation.

(35) "Serious bodily injury" means bodily 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.

(36) "Strict liability" means that a culpable mental state is not an element of the offense.

(37) "Swear" includes affirm.

(38) "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.

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

CHAPTER 2. BURDEN OF PROOF

Section
2.01 Proof Beyond a Reasonable Doubt
2.02 Exception
2.03 Defense
2.04 Affirmative Defense
2.05 Presumption

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT.

(a) No person may be convicted of an offense unless each of the following is proved beyond a reasonable doubt:

(1) the conduct, circumstances surrounding the conduct, or result of the conduct described in the definition of the offense; and

(2) the culpable mental state required; and

(3) the negation of any exception to an offense defined in this code; and

(4) the negation of any defense to an offense defined in this code if evidence is admitted supporting the defense; and

(5) venue (if the issue is raised); and

(6) jurisdiction; and

(7) the commission of the offense within the time period specified in Code of Criminal Procedure Chapter 12.

(b) In the absence of the proof required by Subsection (a), the innocence of the defendant is presumed.

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.

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 under . . . that . . . ."

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

(e) A ground of defense in a penal law, other than one negating an element of the offense, that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

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 under . . . , which the actor must prove by a preponderance of evidence, that . . . ."

(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 has the burden of establishing the defense by a preponderance of the evidence.

Sec. 2.05. PRESUMPTION.

When this code or another penal law establishes a presumption with respect to any fact that is an element of an offense, 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 issue of the existence of the presumed fact is submitted to the jury, the court shall charge that although the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the facts giving rise to the presumption are some evidence of the presumed fact.

CHAPTER 3. MULTIPLE PROSECUTIONS AND DOUBLE JEOPARDY

Section

3.01 Chapter Definition
3.02 Compulsory Joinder of Prosecutions for Offenses Arising out of Same Criminal Episode
3.03 Multiple Sentences Prohibited Following Convictions for Offenses Arising out of Same Criminal Episode
3.04 When Prosecution Barred by Former Prosecution for Offense Arising out of Same Criminal Episode
3.05 When Prosecution Barred by Former Prosecution in Another Jurisdiction
3.06 When Prosecution not Barred by Former Prosecution

Sec. 3.01. CHAPTER DEFINITION.

In this chapter, unless the context requires a different definition, "criminal episode" means all conduct, including criminal solicitation and criminal conspiracy, incident to the attempt or accomplishment of a single criminal objective, even though the harm is directed toward or inflicted upon more than one person.

Sec. 3.02. COMPULSORY JOINDER OF PROSECUTIONS FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE.

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

(b) The state must join in a single criminal action all offenses arising out of the same criminal episode unless:

(1) the court severs one or more of the offenses

defense is submitted to the jury, the court shall charge that the defendant has the burden of establishing the defense by a preponderance of the evidence.

Sec. 2.05. PRESUMPTION.

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(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 issue of the existence of the presumed fact is submitted to the jury, the court shall charge that although the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the facts giving rise to the presumption are some evidence of the presumed fact.

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

(b) The state must join in a single criminal action all offenses arising out of the same criminal episode unless:

(1) the court severs one or more of the offenses

under Code of Criminal Procedure Article 36.09; or

(2) evidence to establish probable guilt of the offense for which a subsequent prosecution is sought was not known to the state at the time the former prosecution commenced; or

(3) the offenses are not within the jurisdiction of a single court and the former prosecution did not originate in a county-level or district court; or

(4) exclusive venue over the offense for which a subsequent prosecution is sought lies in a different county.

(c) If a judgment of guilt is reversed, set aside, or vacated, and new trial ordered, the state may not join in the new trial any offense required to be but not joined in the former prosecution unless evidence to establish probable guilt of that offense was not known to the state at the time the first prosecution commenced.

Sec. 3.03. MULTIPLE SENTENCES PROHIBITED FOLLOWING CONVICTIONS FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE.

If a defendant is adjudged guilty of more than one offense arising out of the same criminal episode, he may not be sentenced for more than one offense unless:

(1) one or more of the offenses was severed from the former prosecution under Code of Criminal Procedure Article 36.09; or

(2) evidence to establish probable guilt of the offense for which a separate sentence is sought was not known to the state at the time the former prosecution commenced; or

(3) the offenses are not within the jurisdiction of a single court and the former prosecution did not originate in a county-level or district court; or

(4) exclusive venue over the offense for which a subsequent prosecution is sought lies in a different county; or

(5) the defendant is adjudged guilty of murder, aggravated rape, or aggravated sexual abuse, in which event his conduct toward each victim may be treated as a separate offense for sentencing purposes.

Sec. 3.04. WHEN PROSECUTION BARRED BY FORMER PROSECUTION FOR OFFENSE ARISING OUT OF SAME CRIMINAL EPISODE.

(a) If a defendant has been prosecuted for one or more offenses arising out of a criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:

(1) the subsequent prosecution is for an offense that was or should have been tried under Section 3.02 in the

former prosecution; and

(2) the former prosecution:

(A) resulted in acquittal; or

(B) resulted in conviction; or

(C) was improperly terminated; or

(D) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

(b) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. Notwithstanding Section 3.06(3), a finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(c) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty or nolo contendere accepted by the court.

(d) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant or, if jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

(1) the defendant consents to the termination; or

(2) the defendant waives his right to object to the termination; or

(3) the court finds and states for the record that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law; or

(B) there is a legal defect in the proceeding, not attributable to the state, that would make any judgment entered upon a verdict reversible as a matter of law; or

(C) prejudicial conduct in or out of the courtroom, not attributable to the state, makes it impossible to proceed with the trial without injustice to the defendant or state; or

(D) the jury is unable to agree upon a verdict, or upon probation or a sentence in a capital case; or

(E) false statements of a juror on voir dire prevent a fair trial.

Sec. 3.05. WHEN PROSECUTION BARRED BY FORMER PROSECUTION IN ANOTHER JURISDICTION.

(a) If a defendant's conduct may establish the commission of one or more offenses within the concurrent jurisdiction of this state and of another jurisdiction, federal or state, a prosecution in the other jurisdiction is a bar to subsequent prosecution in this state if either:

(1) the former prosecution resulted in acquittal, conviction, or improper termination of prosecution, as those terms are defined in Section 3.04, and the subsequent prosecution is for an offense arising out of the same criminal episode unless evidence to establish probable guilt of the offense for which subsequent prosecution is sought was not known to this state at the time the first prosecution commenced; or

(2) the former prosecution was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established for conviction in the subsequent prosecution.

Sec. 3.06. WHEN PROSECUTION NOT BARRED BY FORMER PROSECUTION.

Except as provided in Section 3.04(b), a prosecution is not barred under Section 3.04 or 3.05 if:

(1) the former prosecution was before a court that lacked jurisdiction over the defendant or the offense; or

(2) the former prosecution was procured by the defendant without the knowledge of the prosecuting attorney bringing the subsequent prosecution and with intent to avoid the sentence that might otherwise be imposed; or

(3) the former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on writ of habeas corpus, coram nobis, or similar collateral attack.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Section

6.01 Requirement of Voluntary Act or Omission

6.02 Possession as Voluntary Act

6.03 Criminal Responsibility for Omission

6.04 Requirement of Culpable Mental State

6.05 Definitions of Culpable Mental States

6.06 Application of Culpable Mental States

6.07 Causation: Criminal Responsibility for Causing a Result

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION.

(a) A person does not commit an offense unless his criminal responsibility is based on conduct that includes either a voluntary act or a conscious omission to perform a voluntary act when he is physically capable of performing it.

(b) A voluntary act is a bodily movement performed consciously as a result of effort or determination.

Sec. 6.02. POSSESSION AS VOLUNTARY ACT.

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.

Sec. 6.03. CRIMINAL RESPONSIBILITY FOR OMISSION.

A person does not commit an offense if his criminal responsibility is based solely on an omission to perform a voluntary act unless:

(1) the law defining the offense imposes criminal responsibility for the omission; or

(2) a duty to perform the omitted voluntary act is imposed by statute.

Sec. 6.04. REQUIREMENT OF CULPABLE MENTAL STATE.

(a) Except as provided in Subsection (b), a person does not commit an offense unless he acts intentionally, knowingly, recklessly, or with criminal negligence, as the definition of the offense requires, with respect to each element of the offense.

(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.

Sec. 6.05. 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 purpose or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to 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 practically 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.

Sec. 6.06. APPLICATION OF CULPABLE MENTAL STATES.

If the definition of an offense prescribes a culpable mental state but does not specify the elements to which it applies, the culpable mental state applies to the conduct, circumstances surrounding the conduct, or the result of the conduct that is an element of the offense.

Sec. 6.07. CAUSATION: CRIMINAL RESPONSIBILITY FOR CAUSING A RESULT.

(a) Subject to the additional requirements in Subsections (b) and (c), an element of an offense requiring that an actor cause a result is established if the result would not have occurred as it did but for the actor's conduct.

(b) If the offense requires that the actor intentionally or knowingly cause a result, he is criminally responsible for the result if the result that actually occurred:

(1) was desired or contemplated, whether the desire or contemplation extended to natural events or the conduct of another; or

(2) was desired or contemplated and occurred in a manner not too accidental, or by a means not too dependent on another's volitional act, to have a just bearing on the actor's criminal responsibility or the gravity of his offense.

(c) If the offense requires that the actor recklessly or with criminal negligence cause a result, he is criminally responsible for the result if the result that actually occurred:

(1) was within the risk perceived or that which should have been perceived, whether the risk extended to natural events or the conduct of another; or

(2) was within the risk perceived or that which

should have been perceived and occurred in a manner not too accidental, or by a means not too dependent on another's volitional act, to have a just bearing on the actor's criminal responsibility or the gravity of his offense.

(d) An actor 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 a different person or property was injured, harmed, or otherwise affected.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

Subchapter A. Complicity

Section

7.01 Parties to Offenses

7.02 Criminal Responsibility for Conduct of Another

7.03 Criminal Responsibility for Facilitation of Felony

7.04 Defenses Excluded

7.05 Defenses Available

Subchapter B. Corporations and Associations

7.21 Subchapter Definitions

7.22 Criminal Responsibility of Corporation

7.23 Criminal Responsibility of Association

7.24 Defense to Criminal Responsibility of Corporation or Association

7.25 Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association

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.

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 irresponsible person to engage in conduct prohibited by the definition of the offense; or

(2) acting with intent to promote or assist the commission of the offense, he solicits, 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) A coconspirator is not a party to an offense committed by the conduct of another unless he is criminally responsible for the offense under Subsection (a).

Sec. 7.03. CRIMINAL RESPONSIBILITY FOR FACILITATION OF FELONY.

(a) An individual, corporation, or association is criminally responsible for the facilitation of a felony if, knowing that another intends to commit a specific felony, he knowingly furnishes substantial assistance in the commission of the felony.

(b) The facilitation of the commission of a capital felony is a felony of the first degree. The facilitation of the commission of a felony of the first degree is a felony of the second degree. The facilitation of a felony of the second or third degree is a Class A misdemeanor.

Sec. 7.04. 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 or facilitated its commission, and it is no defense:

(1) that the actor belongs to a class of persons who 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.

Sec. 7.05. DEFENSES AVAILABLE.

(a) Unless otherwise provided by law, it is a defense to a prosecution in which an actor's criminal responsibility is based on the conduct of another:

(1) that the actor is a victim of the offense; or

(2) that the offense is so defined that the actor's conduct is inevitably incident to its commission.

(b) It is an affirmative defense to a prosecution in which the actor's criminal responsibility is based on the conduct of another, which the actor must prove by a preponderance of evidence, that, under circumstances manifesting a voluntary and complete renunciation of his criminal objective, the actor withdrew from participation in the offense before its commission and made a substantial effort to prevent its commission.

(c) For purposes of Subsection (b), renunciation is not voluntary and complete if it is motivated in whole or 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 criminal objective; or

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

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

Sec. 7.21. SUBCHAPTER DEFINITIONS.

In this subchapter, unless the context requires a different definition:

(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 (including a director or employee) 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.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION.

(a) A corporation is criminally responsible for an offense described in Subsection (b) if the offense is committed by an agent of the corporation acting within the scope of his office or employment.

(b) Offenses for which an agent may impose criminal responsibility on a corporation under Subsection (a) are:

(1) a misdemeanor offense defined in this code that uses the term "corporation" in the accusatory portion of the offense definition;

(2) a misdemeanor offense defined by law other than this code that imposes strict liability;

(3) a misdemeanor offense defined by law other than this code in which a legislative purpose to impose criminal responsibility on corporations plainly appears.

(c) A corporation is criminally responsible for an offense described in Subsection (d) if commission of the offense is authorized, requested, commanded, performed, or recklessly tolerated by:

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

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

(d) Offenses for which the board of directors or a high managerial agent may impose criminal responsibility on a corporation under Subsection (c) are:

(1) any offense defined in this code that uses the term "corporation" in the accusatory portion of the offense definition;

(2) any offense defined by law other than this code that imposes strict liability;

(3) any offense defined by law other than this code in which a legislative purpose to impose criminal responsibility on corporations plainly appears.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF ASSOCIATION.

(a) Except as qualified by Subsection (e), an association is criminally responsible for an offense described in Subsection (b) if the offense is committed by an agent of the association acting within the scope of his office or employment.

(b) Offenses for which an agent may impose criminal responsibility on an association under Subsection (a) are:

(1) a misdemeanor offense defined in this code that uses the term "association" in the accusatory portion of the offense definition;

(2) a misdemeanor offense defined by law other than this code that imposes strict liability;

(3) a misdemeanor offense defined by law other than this code in which a legislative purpose to impose criminal responsibility on associations plainly appears.

(c) Except as qualified by Subsection (e), an association is criminally responsible for an offense described in Subsection (d) if commission of the offense is authorized, requested, commanded, performed, or recklessly tolerated by a high managerial agent of the association acting within the scope of his office or employment.

(d) Offenses for which a high managerial agent may impose criminal responsibility on an association under Subsection (c) are:

(1) any offense defined in this code that uses the term "association" in the accusatory portion of the offense definition;

(2) any offense defined by law other than this code that imposes strict liability;

(3) any offense defined by law other than this code in which a legislative purpose to impose criminal responsibility on associations plainly appears.

(e) The law defining the offense controls over Subsections (a) and (c) to the extent:

(1) that it designates the agent or high managerial agent for whose action the association is criminally responsible;

(2) that it describes the circumstances under which the association is criminally responsible.

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION.

It is a defense to prosecution of a corporation or association under Sections 7.22(b)(1) and (b)(3) and 7.23 (b)(1) and (b)(3) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

Sec. 7.25. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION OR ASSOCIATION.

(a) A person 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 in behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense without regard

to the sentence authorized by law for the corporation or association.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Section

8.01 Insanity
8.02 Ignorance or Mistake of Fact or Law
8.03 Intoxication
8.04 Duress
8.05 Entrapment
8.06 Age Affecting Criminal Court Jurisdiction

Sec. 8.01. INSANITY.

A person is not criminally responsible for what otherwise would be an offense if at the time of the conduct charged to constitute the offense, as a result of mental disease or defect, he lacked capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law he allegedly violated.

Sec. 8.02. IGNORANCE OR MISTAKE OF FACT OR LAW.

(a) It is a defense to prosecution that the actor was honestly ignorant or mistaken about a matter of fact or law if his ignorance or mistake negated the intent, knowledge, recklessness, or criminal negligence required to establish an element of the offense charged.

(b) Except as provided in Subsection (a), ignorance or mistake about the existence or meaning of a penal law is no defense. However, an actor's ignorance or mistake about the existence or meaning of the law under which he is being prosecuted is a defense to the prosecution if:

(1) because of his ignorance or mistake the actor reasonably believed his conduct did not constitute an offense; and

(2) his ignorance or mistake resulted from the actor's reasonable reliance on:

(A) 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

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

(c) Although an actor's ignorance or mistake of fact or 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 fact or law were as he believed.

Sec. 8.03. INTOXICATION.

(a) Except as provided in Subsection (c), intoxication itself is not a defense to prosecution for an offense. However, intoxication, whether voluntary or involuntary, is admissible in evidence if it is relevant to negate an element of the offense.

(b) If recklessness establishes an element of an offense and the actor is unaware of a risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

(c) Intoxication itself does not constitute mental disease

or defect within the meaning of Section 8.01. However, involuntary intoxication is a defense to prosecution if as a result of the involuntary intoxication the actor lacked capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law he allegedly violated.

(d) For purposes of this section:

(1) "Intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

(2) "Involuntary intoxication" means intoxication that is not voluntary.

(3) "Voluntary intoxication" means intoxication caused by a substance that the actor knowingly introduced into his body, the tendency of which to cause intoxication he knew or ought to have known, unless he introduced the substance under circumstances affording a defense to prosecution.

Sec. 8.04. DURESS.

(a) It is a defense to prosecution that the actor engaged in the conduct charged to constitute an offense because he reasonably believed he was compelled to do so by the threat or use of unlawful force against his person or the person of another, which threat or use of unlawful force a person of ordinary firmness in the actor's situation would not have resisted.

(b) 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.

(c) It is no defense that a woman acted at the command or persuasion of her husband, unless she acted under compulsion that would establish a defense under this section.

(d) If the actor's conduct is otherwise justifiable under Section 9.21 (necessity), this section does not preclude that justification.

Sec. 8.05. ENTRAPMENT.

(a) It is a defense to prosecution that a peace officer, or a person directed by a peace officer, induced the commission of an offense, in order to obtain evidence of the commission for prosecution, by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. However, there is no defense under this section if the peace officer, or person directed by him, merely afforded the actor an opportunity to commit the offense.

(b) The defense provided by this section is available

even though the actor denies commission of the conduct charged to constitute the offense.

(c) On written motion of the defendant, the court shall determine as a matter of fact and law, after a hearing without the jury, whether the defendant was entrapped to commit the offense. The defendant shall file the motion with the court at least 10 days before the trial begins, or if the court sets a pretrial hearing, the defendant shall file the motion during the hearing. However, the court for good cause shown may permit filing the motion at a later time determined by the court.

(d) If the court determines the defendant was entrapped to commit the offense, it shall acquit him if the state has concluded its case, or dismiss the offense with prejudice if the state has not concluded its case. If the court determines the defendant was not entrapped, but evidence is admitted during the trial on the merits supporting the defense, the court shall submit the entrapment defense to the jury.

Sec. 8.06. AGE AFFECTING CRIMINAL COURT JURISDICTION.

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

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

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended; or

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

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

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

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended; or

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

(c) A person who has been alleged in a petition for an adjudicatory hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted or convicted for any offense alleged in the juvenile court petition or any offense within the knowledge of the

juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

Subchapter A. General Provisions

Section

9.01 Chapter Definitions

9.02 Justification a Defense

9.03 Confinement as Justifiable Force

9.04 Reckless Injury of Innocent Third Person

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Subchapter B. Justification Generally

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Subchapter C. Protection of Persons

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9.51 Arrest and Search

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Subchapter F. Special Relationships

9.61 Parent-Child

9.62 Teacher-Student

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Custody" means under arrest by a peace officer, or under restraint by a public servant pursuant to an order of a court.

(2) "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.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

Sec. 9.02. JUSTIFICATION A DEFENSE.

Justification is a defense to prosecution for conduct that is justified under this chapter.

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.

Sec. 9.04. 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.

Sec. 9.05. 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.

SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. NECESSITY.

Conduct is justified if:

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

(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.

Sec. 9.22. 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 tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is threatened or used against a person to protect persons (Sections 9.31-9.34), to protect property (Sections 9.41-9.43), for law enforcement (Sections 9.51-9.54), or by virtue of a special relationship (Sections 9.61-9.63).

(c) The threat or 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 threatening or using it.

(d) The justification afforded by this section is available if:

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

(2) the actor reasonably believes 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.

SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. SELF-DEFENSE.

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

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

(1) in response to verbal provocation alone; or

(2) to resist an arrest, search, stop or frisk, or halt at a roadblock 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, search, stop or frisk, or halt is unlawful, unless the resistance is justified under Subsection (c); or

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

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

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

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

(c) The threat or use of force to resist an arrest, search, stop or frisk, or halt at a roadblock 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, search, stop or frisk, or halt; 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 pers n's) use or attempted use of greater force than necessary.

Sec. 9.32. DEADLY FORCE.

A person is justified in threatening or using deadly force against another:

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

(2) when and to the degree he reasonably believes the deadly force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly force.

Sec. 9.33. DEFENSE OF THIRD PERSON.

A person is justified in threatening or 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 threatening or 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.

Sec. 9.34. PROTECTION OF LIFE OR HEALTH.

(a) A person is justified in threatening or 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 on himself.

(b) A person is justified in threatening or 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.

SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF OWN PROPERTY.

(a) A person in lawful possession of land or tangible, moveable property is justified in threatening or using force, but not deadly 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, moveable property by another is justified in threatening or using force, but not deadly 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 threatens or uses the force immediately or in fresh pursuit after the dispossession; and either:

(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.

Sec. 9.42. PROTECTION OF THIRD PERSON'S PROPERTY.

A person is justified in threatening or using force, but not deadly force, against another to protect land or tangible, moveable property of a third person if:

(1) under the circumstances as he reasonably believes them to be the actor would be justified under Section 9.41 in threatening or using force to protect his own land or property; and either:

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

(3) the actor reasonably believes:

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

(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 to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

Sec. 9.43. USE OF DEVICE TO PROTECT PROPERTY.

The justification afforded by Sections 9.41 and 9.42 applies to the use of a device to protect land or tangible, moveable property if use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

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 threatening or 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 is made under a warrant, he reasonably believes the warrant is valid; and

(2) before threatening or 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 threatening or 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 threatening or 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 threatening or 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:

(1) the threat or use of force would have been justified under Subsection (a); and

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

(3) 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.

(d) A person other than a peace officer (including a person acting in a peace officer's presence and at his direction) is justified in threatening or 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:

(1) the threat or use of force would have been justified under Subsection (b); and

(2) 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; and

(3) 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 threatening or using deadly force justified by Subsection (c) or (d).

Sec. 9.52. STOP AND FRISK, HALT AT ROADBLOCK.

A peace officer is justified in threatening or using force, but not deadly force, against another when and to the degree the actor reasonably believes the force is immediately necessary to make a stop or frisk or halt at a roadblock, or to prevent escape after stop or halt, if:

(1) the actor reasonably believes the stop, frisk, or halt is lawful; and

(2) before threatening or using force, the actor manifests his purpose to stop, frisk, or halt and identifies himself as a peace officer, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be stopped or halted.

Sec. 9.53. PREVENTION OF ESCAPE FROM PENAL INSTITUTION.

(a) A peace officer, or guard employed by a penal institution, is justified in threatening or using force against a person in the custody of a penal institution when and to the degree the actor reasonably believes the force is immediately necessary to prevent the person's imminent escape from the penal institution or while being transported to or from the penal institution.

(b) A peace officer, or guard employed by a penal institution, is justified in threatening or using deadly force against a felon in the custody of a penal institution when and to the degree the actor reasonably believes the deadly force is immediately necessary to prevent the felon's imminent escape from the penal institution or while being transported to or from the penal institution. There is no duty to retreat before threatening or using deadly force justified by this subsection.

Sec. 9.54. CRIME PREVENTION.

(a) A person is justified in threatening or 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 prevent the other's imminent commission of arson, burglary, kidnapping, rape or aggravated

rape, or aggravated robbery.

(b) There is no duty to retreat before threatening or using deadly force justified by Subsection (a).

SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT-CHILD.

The threat or 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 someone 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.

Sec. 9.62. TEACHER-STUDENT.

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

(1) if the actor is entrusted with the care or supervision 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.

Sec. 9.63. GUARDIAN-INCOMPETENT.

The threat or 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.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

Subchapter A. General Provisions

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12.01 Sentence in Accordance with Code
12.02 Types of Offenses
12.03 Classification of Felonies
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Subchapter E. Corporations and Associations
12.51 Authorized Punishments for Corporation and Association

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. SENTENCE IN ACCORDANCE WITH CODE.

(a) A person adjudged guilty of an offense under this code shall be sentenced in accordance with this chapter.

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

(c) A felony defined by law outside this code, the sentence for which exceeds the sentence authorized in this chapter for a felony of the third degree, constitutes for sentencing purposes a felony of the third degree. A person adjudged guilty under that law is deemed to be convicted of a felony of the third degree and shall be sentenced for a felony of the third degree in accordance with this chapter.

(d) A misdemeanor defined by law outside this code, the sentence for which exceeds the sentence authorized in this chapter for a Class A misdemeanor, constitutes for sentencing purposes a Class A misdemeanor. A person adjudged guilty under that law is deemed to be convicted of a Class A misdemeanor and shall be sentenced for a Class A misdemeanor in accordance with this chapter.

Sec. 12.02. TYPES OF OFFENSES.

(a) Offenses are designated as felonies or misdemeanors.

(b) An offense is a felony if it is so designated by law or if a person adjudged guilty of the offense may be sentenced to death or to the custody of the Texas Department of Corrections.

(c) An offense is a misdemeanor if it is so designated by law or if a person adjudged guilty of the offense may be sentenced to imprisonment in a county jail for not more than one year or fined not more than $1,000 or both imprisoned and fined.

Sec. 12.03. CLASSIFICATION OF FELONIES.

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

(1) capital felonies;

(2) felonies of the first degree;

(3) felonies of the second degree;

(4) felonies of the third degree.

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

Sec. 12.04. 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, either in this code or in another law, 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.

Sec. 12.05. SENTENCING COMBINATIONS.

(a) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentencing combinations:

(1) to pay a fine; or

(2) to probation; or

(3) to pay a fine and to probation; or

(4) to pay a fine and to imprisonment in a county jail not to exceed 30 days, the imprisonment either contemporaneous with or followed by probation; or

(5) to imprisonment; or

(6) to pay a fine and to imprisonment; or

(7) to death following recommendation of the death penalty by a jury.

(b) 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.

Sec. 12.06. GENERAL PRINCIPLES OF SENTENCING.

(a) A court in sentencing a defendant shall impose the minimum amount of custody or confinement that is consistent with the protection of the public, the prevention of offenses, the gravity of the offense, and the rehabilitative needs of the defendant.

(b) Total confinement in a penal institution is the least preferred sentence, and if the court determines to impose total confinement, it shall fashion the minimum and maximum terms in light of the criteria set out in Subsection (a).

(c) A court in sentencing shall grant a defendant probation unless, considering the criteria set out in Subsection (a), it determines:

(1) there is a great risk the defendant will not make a good faith effort to comply with the conditions of probation or will commit another offense while on probation; or

(2) the defendant needs correctional treatment most effectively afforded in a penal institution; or

(3) that granting probation will significantly depreciate the gravity of defendant's offense.

SUBCHAPTER B. FINES

Sec. 12.21. CRITERIA AND METHODS FOR IMPOSING FINES.

(a) In determining the amount and method of paying a fine, a court shall consider:

(1) a defendant's ability to pay the amount of the fine; and

(2) a defendant's ability to pay the fine at the time and by the method directed; and

(3) the hardship likely to be imposed on a defendant's dependents by the amount of the fine and the time and method of paying it; and

(4) the impact the amount of the fine and the time and method of paying it will have on a defendant's ability to make reparation or restitution to the victim; and

(5) the amount of a defendant's gain, if any, derived from commission of the offense.

(b) When imposing a fine a court may direct a defendant:

(1) to pay the entire fine when sentence is pronounced; or

(2) to pay the entire fine at some later date; or

(3) to pay a specified portion of the fine at designated periodic intervals.

Sec. 12.22. ORDINARY FINE FOR FELONY.

A court may sentence a defendant adjudged guilty of any category of felony to pay a fine, in an amount fixed by the court, not to exceed $5,000.

Sec. 12.23. ORDINARY FINE FOR MISDEMEANOR.

(a) A court may sentence a defendant adjudged guilty of a Class A misdemeanor to pay a fine, in an amount fixed by the court, not to exceed $1,000.

(b) A court may sentence a defendant adjudged guilty of a Class B misdemeanor to pay a fine, in an amount fixed by the court, not to exceed $500.

(c) A court may sentence a defendant adjudged guilty of a Class C misdemeanor to pay a fine, in an amount fixed by the court, not to exceed $200.

(d) If a law outside this code defines a misdemeanor and specifies the amount of fine, a court shall fix the amount of fine in accordance with that law, except as provided in Section 12.01(d) (sentence in accordance with code).

SUBCHAPTER C. IMPRISONMENT

Sec. 12.31. ORDINARY TERM IMPRISONMENT FOR FELONY.

(a) A court may sentence a defendant adjudged guilty of a felony of the first degree:

(1) to life imprisonment; or

(2) to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 12 years and the maximum at not more than life imprisonment; or

(3) to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 10 years and the maximum at not more than 30 years.

(b) A court may sentence a defendant adjudged guilty of a felony of the second degree to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 4 years and the maximum at not more than 12 years.

(c) A court may sentence a defendant adjudged guilty of a felony of the third degree to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 2 years and the maximum at not more than 6 years.

(d) Except as provided in Subsection (e), no sentence may be imposed under this section in which the minimum term is longer than one-third of the maximum term.

(e) Subsection (d) does not apply when this section authorizes a sentence to life imprisonment. Subsection (d) does not prohibit a court from sentencing a defendant adjudged guilty of a felony of the third degree to a term of imprisonment

the minimum of which equals one year and the maximum of which equals two years.

Sec. 12.32. IMPRISONMENT FOR MISDEMEANOR.

(a) A court may sentence a defendant adjudged guilty of a Class A misdemeanor to imprisonment in a county jail for a term not to exceed one year.

(b) A court may sentence a defendant adjudged guilty of a Class B misdemeanor to imprisonment in a county jail for a term not to exceed three months.

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. FINE BASED ON GAIN.

(a) If a defendant has gained money or property by committing any category of felony, a court may sentence the defendant to pay a fine, in an amount fixed by the court, not to exceed double the amount of the defendant's gain from committing the felony.

(b) If a defendant has gained money or property by committing a Class A or Class B misdemeanor, a court may sentence the defendant to pay a fine, in an amount fixed by the court, not to exceed double the amount of the defendant's gain from committing the misdemeanor.

(c) For purposes of this section, "gain" means the amount of money or value of property derived from the commission of an offense, less the amount of money or value of property returned to the victim or seized by or surrendered to lawful authority before the sentencing hearing begins.

Sec. 12.42. EXTENDED TERM IMPRISONMENT FOR HABITUAL OFFENDER.

(a) A court may sentence a defendant adjudged guilty of a felony of the second or third degree to an extended term of imprisonment if the court determines under Subsection (c) that the defendant is an habitual offender.

(b) The extended term of imprisonment for an habitual offender consists of:

(1) a minimum term the court shall fix at not less than 1 year nor more than 12 years and a maximum at not more than 30 years, if defendant stands adjudged guilty of a felony of the second degree;

(2) a minimum term the court shall fix at not less than 1 year nor more than 6 years and a maximum at not more than 30 years, if defendnat stands adjudged guilty of a felony of the third degree.

(c) To determine that a defendant is an habitual offender, the court must find:

(1) that the defendant has been convicted two or more times before of any category of felony; and

(2) that extended term imprisonment is necessary to protect the public

Sec. 12.43. EXTENDED TERM IMPRISONMENT FOR ORGANIZED CRIMINAL OFFENDER.

(a) A court may sentence a defendant adjudged guilty of a felony of the second or third degree to an extended term of imprisonment if the court determines under Subsection (c) that the defendant is an organized criminal offender.

(b) The extended term of imprisonment for an organized criminal offender consists of:

(1) a minimum term the court shall fix at not less than 1 year nor more than 12 years and a maximum at not more than 30 years, if defendant stands adjudged guilty of a felony of the second degree;

(2) a minimum term the court shall fix at not less than 1 year nor more than 6 years and a maximum at not more than 30 years, if the defendant stands adjudged guilty of a felony of the third degree.

(c) To determine that a defendant is an organized criminal offender, the court must find:

(1) that the defendant stands adjudged guilty of a felony under Section 19.02 (murder); Section 20.01 (kidnapping); Section 28.02 (arson); Chapter 31 (theft); Chapter 32 (fraud); Section 36.02 (bribery) or 36.05 (tampering with witness); Section 37.03 (aggravated perjury); Section 43.05 (aggravated promotion of prostitution) or 43.06 (compelling prostitution); Chapter 46 (weapons); Section 47.04 (gambling promotion); or Chapter 48 (drugs); and

(2) that the felony of which the defendant stands adjudged guilty is part of a pattern of conduct:

(A) constituting one or more offenses under the law of this state or another jurisdiction; and

(B) continuing over a protracted period of time; and

(C) carried on in concert by the defendant and 10 or more other persons; and

(3) that extended term imprisonment is necessary to protect the public.

Sec. 12.44. EXTENDED TERM IMPRISONMENT FOR HABITUAL PETTY THIEF.

(a) A court may sentence a defendant adjudged guilty of misdemeanor theft under Chapter 31 to an extended term of imprisonment if the court determines under Subsection (c) that the defendant is an habitual petty thief.

(b) The extended term of imprisonment for an habitual

petty thief consists of a minimum the court shall fix at not less than one year nor more than two years and a maximum at not more than six years.

(c) To determine that a defendant is an habitual petty thief, the court must find:

(1) that defendant has been convicted two or more times before of misdemeanor theft; and

(2) that extended term imprisonment is necessary to protect the public.

Sec. 12.45. CONCURRENT AND CONSECUTIVE TERMS OF IMPRISONMENT FOR FELONY.

(a) Subject to the limitation in Subsections (b)-(e), a court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. Sentences are deemed to run concurrently unless the court states in the sentence that they run consecutively.

(b) A court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in determing whether to impose consecutive sentences.

(c) A court may not impose consecutive sentences for offenses arising out of a single criminal episode.

(d) If a court lawfully determines to impose consecutive sentences, the aggregate minimum of all sentences imposed may not exceed 12 years' imprisonment and the aggregate maximum of all sentences imposed may not exceed 30 years' imprisonment. However, this limitation does not apply if an offense for which defendant is sentenced authorizes the death penalty or life imprisonment.

(e) The limitation in Subsection (d) applies:

(1) if a defendant is sentenced at the same time for more than one offense;

(2) if a defendant is sentenced at different times for one or more offenses all of which were committed prior to imposition of sentence for any one or more of them;

(3) if a defendant has already been sentenced by a court of this state, other than the present sentencing court, or by a court of another state or federal jurisdiction.

(f) For purposes of this section, "criminal episode" means all conduct, including criminal solicitation and criminal conspiracy, incident to the attempt or accomplishment of a single criminal objective, even though the harm is directed toward or inflicted upon more than one person.

Sec. 12.46. DEATH PENALTY FOR CAPITAL FELONY.

A defendant adjudged guilty of a capital felony may not be sentenced to death if he was younger than 18 years at the time he committed the felony. Rather, a court shall sentence him for a felony of the first degree.

Sec. 12.47. REDUCTION OF THIRD DEGREE FELONY TO MISDEMEANOR.

A court may set aside a judgment of guilt of a felony of the third degree, and enter a judgment of guilt and sentence a defendant for any class of misdemeanor, if the court finds, after considering the gravity and circumstances of the felony committed and the history, character, and rehabiliative needs of the defendant, that it would be unduly harsh to sentence the defendant for the felony of which he was adjudged guilty.

Sec. 12.48. ADMISSION OF UNADJUDICATED OFFENSE.

(a) A defendant may 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. The court may not take into account an admitted offense of a higher category than any of the offenses of which defendant 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 and venue over the offense.

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

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATION AND ASSOCIATION.

(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) $10,000 if the offense is a felony of any category; or

(2) $2,000 if the offense is a Class A or Class B misdemeanor; or

(3) $200 if the offense is a Class C misdemeanor.

(c) In lieu of the fines authorized by Subsections (a)

and (b)(1) and (b)(2), if a court finds that the corporation or association gained money or property 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, in accordance with the criteria set out in Section 12.41.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Section

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

Sec. 15.01. CRIMINAL ATTEMPT.

(a) An individual, corporation, or association commits criminal attempt if, acting with the kind of culpability otherwise required for the offense:

(1) he intentionally engages in action or causes a result that would constitute the offense if the circumstances surrounding his conduct were as he believes them to be; or

(2) he acts with intent to cause a result that is an element of the offense, and he believes his conduct will cause the result without further conduct on his part; or

(3) he acts with intent to complete a course of action or cause a result that would constitute the offense, under the circumstances surrounding his conduct as he believes them to be, and his conduct constitutes a substantial step toward commission of the offense.

(b) Conduct does not constitute a substantial step under Subsection (a)(3) unless the actor's entire course of action is strongly corroborative of his intent to commit the offense.

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

(d) Criminal attempt to commit a capital felony is a felony of the first degree. Criminal attempt to commit a felony of the first degree is a felony of the second degree. Criminal attempt to commit a felony of the second degree is a felony of the third degree. Criminal attempt to commit a felony of the third degree is a Class A misdemeanor. Criminal attempt to commit a Class A misdemeanor is a Class B misdemeanor. Criminal attempt to commit a Class B or C misdemeanor is a Class C misdemeanor.

Sec. 15.02. CRIMINAL CONSPIRACY.

(a) An individual, corporation, or association 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, under circumstances surrounding his conduct as the actor believes them to be, would constitute the felony; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) A coconspirator's criminal responsibility for the felony committed in furtherance of the conspiracy is determined under Chapter 7, Subchapter A (complicity).

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

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

(2) that one or more of the coconspirators 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; or

(3) that the agreement of a purported coconspirator was feigned; or

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

(5) that the object felony was actually committed.

(d) Unless otherwise provided by law, it is a defense to prosecution for criminal conspiracy:

(1) that the actor is the victim of the object felony; or

(2) that the object felony is so defined that the actor's conduct is inevitably incident to its commission.

(e) Criminal conspiracy to commit a capital felony is a felony of the first degree. Criminal conspiracy to commit a felony of the first degree is a felony of the second degree. Criminal conspiracy to commit a felony of the second degree is a felony of the third degree. Criminal conspiracy to commit a felony of the third degree is a Class A misdemeanor.

Sec. 15.03. CRIMINAL SOLICITATION.

(a) An individual, corporation, or association commits criminal solicitation 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) An individual, corporation, or association may not

be convicted of criminal solicitation:

(1) upon the uncorroborated testimony of the person allegedly solicited;

(2) unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act upon the solicitation.

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

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

(2) that 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; or

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

(4) that the felony solicited was actually committed.

(d) Criminal solicitation of a capital felony is a felony of the first degree. Criminal solicitation of a felony of the first degree is a felony of the second degree.

Sec. 15.04. RENUNCIATION DEFENSE.

(a) It is an affirmative defense to prosecution under Section 15.01(a)(2) and (a)(3) (criminal attempt), which the actor must prove by a preponderance of the evidence, 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 Sections 15.02 (criminal conspiracy) and 15.03 (criminal solicitation), which the actor must prove by a preponderance of the evidence, 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 made a substantial effort to prevent commission of the object offense.

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

(1) 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 criminal objective; or

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

Sec. 15.05. NO OFFENSE.

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

CHAPTER 16. CRIMINAL INSTRUMENTS

Section

16.01 Unlawful Use of Criminal Instrument

16.02 Preemption

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT.

(a) An individual, corporation, or association commits an offense if:

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

(2) he intentionally or knowingly manufactures or sells a criminal instrument.

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

(c) An offense under Subsection (a)(1) is a Class B misdemeanor; an offense under Subsection (a)(2) is a felony of the third degree.

Sec. 16.02. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Section

19.01 Types of Criminal Homicide

19.02 Murder

19.03 Manslaughter

19.04 Criminally Negligent 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 another.

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

Sec. 19.02. MURDER.

(a) Except as provided in Section 19.03(a)(2) (killing on legal provocation), an individual or corporation commits murder if:

(1) he intentionally or knowingly causes the death of another; or

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

(3) he commits or attempts to commit a felony, other than manslaughter or criminally negligent homicide, and in the course of and in furtherance of the felony, 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 another; or

(4) he is a party to a felony and another party to the felony commits murder as defined in Subdivision (3), and the actor:

(A) solicits, directs, aids, or attempts to aid the homicidal act; or

(B) is armed with a deadly weapon; or

(C) is reckless with regard to whether the other party is armed with a deadly weapon; or

(D) is reckless with regard to whether the other party intends to commit an act clearly dangerous to human life.

(b) Murder is a capital felony.

Sec. 19.03. MANSLAUGHTER.

(a) An individual or corporation commits manslaughter if:

(1) he recklessly causes the death of another; or

(2) he causes the death of another under circumstances that would constitute murder under Section 19.02 except that he causes the death under the influence of extreme emotional disturbance, which disturbance is not the result of his own intentional, knowing, reckless, or criminally negligent act, and for which disturbance there is an adequate explanation.

(b) For purposes of Subsection (a)(2), the adequacy of the explanation for the disturbance shall be determined from the viewpoint of an ordinary person in the actor's situation under the circumstances as the actor reasonably believes them to be.

(c) Manslaughter is a felony of the second degree.

Sec. 19.04. CRIMINALLY NEGLIGENT HOMICIDE.

(a) An individual or corporation commits criminally negligent homicide if he causes the death of another by criminal negligence.

(b) Criminally negligent homicide is a felony of the third degree.

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Section
20.01 Kidnapping
20.02 False Imprisonment

Sec. 20.01. KIDNAPPING.

(a) An individual or corporation commits kidnapping if by force, threat, or fraud he intentionally or knowingly detains another for a substantial period, or intentionally or knowingly moves another a substantial distance from the vicinity where he is found, with intent:

(1) to hold the other for ransom or reward or as a shield or hostage; or

(2) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony; or

(3) to inflict serious bodily injury or death on the victim or another; or

(4) to terrorize the victim or another.

(b) A detention or moving is deemed to be the result of force, threat, or fraud if the victim is mentally incompetent or younger than 14 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

(c) Kidnapping is a capital felony unless the actor voluntarily releases the victim alive and in a safe place before arraignment, in which event kidnapping is a felony of the first degree.

Sec. 20.02. FALSE IMPRISONMENT.

(a) An individual or corporation commits false imprisonment if by force, threat, or fraud he intentionally or knowingly detains another or intentionally or knowingly moves another a substantial distance from the vicinity where he is found.

(b) A detention or moving is deemed to be the result of force, threat, or fraud if the victim is mentally incompetent or younger than 14 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

(c) Except as provided in Subdivisions (1) and (2), false

imprisonment is a Class B misdemeanor. False imprisonment is a felony of the third degree if:

(1) the victim is younger than 14 years; or

(2) the actor recklessly exposes the victim to a substantial risk of serious bodily injury or death.

CHAPTER 21. SEXUAL OFFENSES

Section

21.01 Chapter Definitions
21.02 Rape
21.03 Aggravated Rape
21.04 Sexual Abuse
21.05 Aggravated Sexual Abuse
21.06 Homosexuality
21.07 Public Lewdness
21.08 Indecent Exposure
21.09 Rape of a Child
21.10 Sexual Abuse of a Child
21.11 Indecency with a Child
21.12 General Provisions
21.13 Preemption

Sec. 21.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Criminal episode" means all conduct, including criminal solicitation and criminal conspiracy, incident to the attempt or accomplishment of a single criminal objective, even though the harm is directed toward or inflicted upon more than one person.

(2) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(3) "Sexual contact" means any touching of the anus or any any part of the genitals of another person, or the breast of a female 10 years or older, with intent to arouse or gratify the sexual desire of any person.

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

Sec. 21.02. RAPE.

(a) A male commits rape if he has sexual intercourse with a female not his wife without the female's consent.

(b) The intercourse is without the female's consent under one or more of the following circumstances only:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(2) he compels her to submit or participate by any threat that would prevent resistance by a woman of ordinary resolution; or

(3) she has not consented and he knows she is unconscious or physically unable to resist; or

(4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it; or

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring; or

(6) he knows that she submits or participates because she erroneously believes that he is her husband; or

(7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

(c) Rape is a felony of the second degree.

Sec. 21.03. AGGRAVATED RAPE.

(a) A male commits aggravated rape if he commits rape as defined in Section 21.02 or rape of a child as defined in Section 21.09, and:

(1) he causes serious bodily injury or death to another in the course of the same criminal episode; or

(2) he compels submission to the rape by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone; or

(3) the female is an inmate in a hospital licensed by the State Department of Health and he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it.

(b) Aggravated rape is a capital felony.

Sec. 21.04. SEXUAL ABUSE.

(a) An individual commits sexual abuse if, without the other person's consent and with intent to arouse or gratify the sexual desire of any person:

(1) the actor engages in deviate sexual intercourse with the other person, not his spouse, whether the other person is of the same or opposite sex; or

(2) the actor compels the other person to engage in sexual intercourse or deviate sexual intercourse with a third person, whether the other person is of the same sex as or opposite sex from the third person.

(b) The intercourse is without the other person's consent under one or more of the following circumstances only:

(1) the actor compels the other person to submit or participate by force that overcomes such earnest resistance as might be reasonably expected under the circumstances; or

(2) the actor compels the other person to submit or participate by any threat that would prevent resistance by a person of ordinary resolution; or

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

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

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

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

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

(c) Sexual abuse is a felony of the second degree.

Sec. 21.05. AGGRAVATED SEXUAL ABUSE.

(a) An individual commits aggravated sexual abuse if he commits sexual abuse as defined in Section 21.04 or sexual abuse of a child as defined in Section 21.10, and:

(1) he causes serious bodily injury or death to another in the course of the same criminal episode; or

(2) he compels submission to the sexual abuse by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone; or

(3) the other person is an inmate of a hospital licensed by the State Department of Health and the actor knows that as a result of mental disease or defect the other person is at the time of the sexual intercourse or deviate sexual intercourse incapable either of appraising the nature of the act or of resisting it.

(b) Aggravated sexual abuse is a capital felony.

Sec. 21.06. HOMOSEXUALITY.

(a) An individual 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 A misdemeanor.

Sec. 21.07. PUBLIC LEWDNESS.

(a) An individual commits public lewdness if he engages in any of the following acts and he is reckless about whether another is present who will be offended or alarmed by his act:

(1) an act of sexual intercourse;

(2) an act of deviate sexual intercourse;

(3) an act of sexual contact;

(4) any act involving contact between the person's mouth or genitals and the genitals or anus of an animal or fowl.

(b) Public lewdness is a Class A misdemeanor.

Sec. 21.08. INDECENT EXPOSURE.

(a) An individual commits indecent exposure 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) Indecent exposure is a Class C misdemeanor.

Sec. 21.09. RAPE OF A CHILD.

(a) A male commits rape of a child if he has sexual intercourse with a female not his wife, and:

(1) she is younger than 16 years and he is at least 2 years older than she; or

(2) she is younger than 14 years.

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

(c) Rape of a child under Subsection (a)(1) is a felony of the third degree; rape of a child under Subsection (a)(2) is a felony of the first degree.

Sec. 21.10. SEXUAL ABUSE OF A CHILD.

(a) An individual commits sexual abuse of a child if, with intent to arouse or gratify the sexual desire of any person, he engages in deviate sexual intercourse with a child, not his spouse, whether the child is of the same or opposite sex, and:

(1) the child is younger than 16 years and the actor is at least 2 years older than the child; or

(2) the child is younger than 14 years.

(b) It is a defense to prosecution under this section

that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

(c) Sexual abuse of a child under Subsection (a)(1) is a felony of the third degree; sexual abuse of a child under Subsection (a)(2) is a felony of the first degree.

Sec. 21.11. INDECENCY WITH A CHILD.

(a) An individual commits indecency with a child if the child is not his spouse and, without the child's consent,

(1) the actor engages in sexual contact with the child; or

(2) the actor exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) The sexual contact or exposure is without the child's consent if:

(1) the child is younger than 16 years and the actor is at least 2 years older than the child; or

(2) the child is younger than 14 years.

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

(1) sexual intercourse;

(2) deviate sexual intercourse;

(3) sexual contact;

(4) indecent exposure as defined in Subsection (a)(2).

(d) Indecency with a child is a felony of the third degree.

Sec. 21.12. GENERAL PROVISIONS.

(a) If the criminality of conduct defined in this chapter to constitute an offense depends on a child's being younger than 16 years, it is a defense to prosecution for the conduct that the actor reasonably believed the child to be 16 years or older. However, if criminality depends on the child's being younger than 14 years, it is no defense that the actor did not know the child to be younger than 14 years, or reasonably believed the child to be 14 years or older.

(b) The exclusion of conduct with a spouse from the definitions of offenses in Sections 21.02-21.05 (rape, aggravated rape, sexual abuse, aggravated sexual abuse) extends to the conduct of persons while cohabiting, regardless of the legal status of their relationship and of whether they hold themselves out as husband and wife.

(c) No prosecution may be instituted or maintained under

this chapter unless the alleged offense was reported to or discovered by a peace officer:

(1) within 1 month after its occurrence; or

(2) within 1 month after a parent, guardian, or other competent person specially interested in the victim and who is not a party to or facilitator of the offense learns of it, if the alleged victim was younger than 16 years, incompetent, or unable to make complaint.

(d) A person may not be convicted of an offense under Sections 21.02-21.08 (rape, aggravated rape, sexual abuse, aggravated sexual abuse, homosexuality, public lewdness, indecent exposure) upon the uncorroborated testimony of the alleged victim unless the victim made an outcry at the first reasonable opportunity. Corroboration may be circumstantial.

Sec. 21.13. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 22. ASSAULTIVE OFFENSES

Section

22.01 Assault
22.02 Aggravated Assault
22.03 Reckless Conduct
22.04 Consent as Defense to Assaultive Conduct
22.05 Aiding Suicide
22.06 Terroristic Threat

Sec. 22.01. ASSAULT.

(a) An individual or corporation commits assault if:

(1) he intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) he intentionally or knowingly causes another to fear imminent bodily injury; or

(3) he intentionally or knowingly causes physical contact with another and he knows the other will regard the contact as offensive or provocative.

(b) Assault is a Class B misdemeanor unless the offense is committed under Subsection (a)(3), in which event assault is a Class C misdemeanor.

Sec. 22.02. AGGRAVATED ASSAULT.

(a) An individual or corporation commits aggravated assault if he commits assault as defined in Section 22.01,

and:

(1) he causes serious bodily injury to another; or

(2) he causes bodily injury to a person he knows is a peace officer in the lawful discharge of official duty; or

(3) he uses a deadly weapon.

(b) Aggravated assault is a felony of the third degree.

Sec. 22.03. RECKLESS CONDUCT.

(a) An individual or corporation commits an offense if he acts recklessly and places another in imminent danger of death or serious bodily injury.

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

Sec. 22.04. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT.

The victim's effective consent, or the actor's reasonable belief that the victim consented, to the actor's conduct is a defense to prosecution under Section 22.01 (assault), 22.02 (aggravated assault), or 22.03 (reckless 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; or

(B) recognized medical treatment; or

(C) a scientific experiment conducted by recognized methods.

Sec. 22.05. AIDING SUICIDE.

(a) An individual or corporation 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 resulting in serious bodily injury, in which event the offense is a felony of the third degree.

Sec. 22.06. TERRORISTIC THREAT.

(a) An individual or corporation commits terroristic threat if he threatens to commit any offense involving violence with intent:

(1) to cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

(2) to place a person in fear of imminent serious bodily injury; or

(3) to prevent or interrupt the occupation of a building; room; place of assembly; place to which the public has access; or aircraft, automobile, or other form of conveyance.

(b) Terroristic threat is a Class B misdemeanor unless

the actor's intent is to prevent or interrupt the occupation of a building, a place to which the public has access, or a facility of public transportation operated by a common carrier, in which event terroristic threat is a Class A misdemeanor.

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Section

25.01 Bigamy
25.02 Incest
25.03 Interference with Child Custody
25.04 Criminal Abortion
25.05 Aiding Self-Abortion
25.06 Distributing Abortifacients
25.07 Criminal Nonsupport
25.08 Preemption

Sec. 25.01. BIGAMY.

(a) An individual commits bigamy if:

(1) he is married; and

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

(B) he 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

(A) he purports to marry that person in this state under circumstances that would, but for that person's prior marriage, constitute a marriage; or

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

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

(c) Bigamy is a Class A misdemeanor.

Sec. 25.02. INCEST.

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

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

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

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

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

(b) For purposes of this section:

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

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

(c) Incest is a felony of the third degree unless it is committed in violation of Subsection (a)(4), in which event it is a Class A misdemeanor.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY.

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

(1) he knows that his taking or retention violates a temporary or permanent judgment or order disposing of the child's custody; or

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

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

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

Sec. 25.06. DISTRIBUTING ABORTIFACIENTS.

(a) An individual, corporation, or association commits an offense if he sells, possesses with intent to sell, advertises, or displays for sale anything that he knows is specially designed to terminate a pregnancy or that he holds out as useful for that purpose.

(b) It is a defense to prosecution under this section:

(1) that the sale or display was to a hospital, a physician or pharmacist, or to an intermediary in a chain of distribution to hospitals, physicians, or pharmacists; or

(2) that the sale was made upon prescription or order of a physician; or

(3) that the possession was with intent to sell

as authorized by Subdivision (1) or (2); or

(4) that the advertising was addressed to persons named in Subdivision (1) and was confined to trade or professional channels.

(c) For purposes of this section:

(1) "Hospital" means a hospital licensed by the State Department of Health or operated by this state or the federal government.

(2) "Pharmacist" means a person licensed by the State Board of Pharmacy to practice pharmacy.

(3) "Physician" means a practitioner of medicine licensed by the State Board of Medicial Examiners.

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

Sec. 25.07. CRIMINAL NONSUPPORT.

(a) An individual commits criminal nonsupport if he intentionally or knowingly fails to provide support that he can provide and that he knows he is legally obligated to provide to his spouse who is in needy circumstances or to his child younger than 18 years.

(b) Except as provided in Subsection (c), criminal nonsupport is a Class A misdemeanor.

(c) Criminal nonsupport is a felony of the third degree if:

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

(2) the actor committed the offense while residing in another state.

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

Sec. 25.08. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Section

28.01 Chapter Definitions
28.02 Arson
28.03 Criminal Mischief
28.04 Reckless Damage or Destruction

28.05 Actor's Interest in Property
28.06 Amount of Pecuniary Loss
28.07 Preemption

Sec. 28.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(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) "Owner" means a person other than the actor who has possession of property, or any interest other than a mortgage, deed of trust, or security interest in property, even if the possession or interest is unlawful.

(3) "Property" means:

(A) real property; or

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

Sec. 28.02. ARSON.

(a) An individual, corporation, or association commits arson if he starts a fire or causes an explosion:

(1) without the effective consent of the owner and with intent to destroy or damage the owner's building or habitation; or

(2) with intent to destroy or damage any building or habitation to collect insurance for the damage or destruction.

(b) Arson is a felony of the second degree.

Sec. 28.03. CRIMINAL MISCHIEF.

(a) An individual, corporation, or association commits criminal mischief if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner; or

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person.

(b) Criminal mischief is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss was $50 or less; or

(B) except as provided in Subdivision (3)(B), it caused substantial inconvenience to others; or

(2) a Class A misdemeanor if the amount of pecuniary loss was more than $50 but less than $250; or

(3) a felony of the third degree if:

(A) the amount of pecuniary loss was $250 or more; or

(B) regardless of the amount of pecuniary loss, the actor caused impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service for a substantial number of persons.

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION.

(a) An individual, corporation, or association commits an offense if, without the effective consent of the owner, he recklessly damages or destroys tangible property of the owner.

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

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.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS.

(a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the market value of the property at the time and place of the destruction; or

(2) if the market value 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;

(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)-(c), the amount of loss is deemed to be more than $50 but less than $250.

(e) To determine the amount of pecuniary loss if the actor has a legal interest in the property involved, the value of the interest shall be:

(1) deducted from the amount of pecuniary loss, if the property is destroyed; or

(2) deducted from 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.

Sec. 28.07. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 29. ROBBERY

Section

29.01 Chapter Definitions
29.02 Robbery
29.03 Aggravated Robbery

Sec. 29.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(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.

Sec. 29.02. ROBBERY.

(a) An individual or corporation commits robbery if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property:

(1) he intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) Robbery is a felony of the second degree.

Sec. 29.03. AGGRAVATED ROBBERY.

(a) An individual or corporation commits aggravated robbery if he commits robbery as defined in Section 29.02, and:

(1) he causes serious bodily injury to another; or
(2) he uses a deadly weapon.
(b) Aggravated robbery is a capital felony.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Section
30.01 Chapter Definitions
30.02 Burglary
30.03 Criminal Trespass
30.04 Preemption

Sec. 30.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(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) "Owner" means the occupant or, if unoccupied, a person in lawful possession of property.

Sec. 30.02. BURGLARY.

(a) An individual or corporation commits burglary if, without the effective consent of the property owner:

(1) he enters a habitation, or a building (or any portion of a building) not open to the public, with intent to commit a felony or theft; or

(2) he remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) he enters a habitation, or a building (or any portion of a building) not open to the public, and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means:

(1) intrusion of any part of the body; or

(2) intrusion of any physical object connected with the body.

(c) Burglary is a felony of the second degree unless it was committed in a habitation, in which event it is a felony of the first degree.

Sec. 30.03. CRIMINAL TRESPASS.

(a) An individual or corporation commits criminal trespass if:

(1) he enters or remains on property when he:

(A) knows that he does not have the property owner's effective consent to do so; and

(B) intends, knows, or is reckless about whether his presence will cause fear for the safety of another; or

(2) knowing he does not have the owner's effective consent to do so, he enters or remains on property as to which notice against entering is given by:

(A) personal communication to the actor by the owner or by someone with apparent authority to act for the owner; or

(B) fencing or other enclosure obviously designed to exclude intruders; or

(C) posting reasonably likely to come to the attention of intruders.

(b) It is a defense to prosecution under this section:

(1) that the property was open to the public when the actor entered or remained; and

(2) that the actor's conduct did not substantially interfere with the owner's use of the property.

(c) For purposes of this section, "enter" means intrusion of the entire body.

(d) Criminal trespass is a Class C misdemeanor unless it was committed in a habitation, in which event it is a Class B misdemeanor.

Sec. 30.04. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 31. THEFT

Section

31.01 Chapter Definitions
31.02 Consolidation of Theft Offenses
31.03 Theft
31.04 Theft of Service
31.05 Presumption for Theft by Check
31.06 Unauthorized Use of Automobile or Other Vehicle
31.07 Value
31.08 Aggregation of Amounts Involved in Theft
31.09 Actor's Interest in Property
31.10 Claim of Right
31.11 Preemption

Sec. 31.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense; or

(B) to inflict bodily injury in the future on the person threatened or another; or

(C) to accuse any person of any offense; or

(D) to expose any person to hatred, contempt, or ridicule; or

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Deception" means:

(A) creating or confirming by words or conduct an impression of law or fact that is likely to affect the judgment of another in the transaction, that is false, and that the actor does not believe to be true; or

(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; or

(C) preventing another from acquiring information likely to affect his judgment in the transaction; or

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

(3) "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner; or

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

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

(A) induced by deception or coercion; or

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

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

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

(5) "Obtain" means to bring about a transfer or purported transfer of a nonpossessory interest in property, whether to the actor or another.

(6) "Owner" means a person other than the actor who has possession of property, or any interest other than a mortgage, deed of trust, or security interest in property, even if the possession or interest is unlawful.

(7) "Property" means:

(A) real property; or

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(8) "Service" includes:

(A) labor and professional service; and

(B) telecommunication, public utility, and transportation service; and

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(9) "Steal" means to acquire property or service by theft.

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, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Sec. 31.03. THEFT.

(a) An individual, corporation, or association commits theft if, with intent to deprive the owner of property:

(1) he obtains the property unlawfully; or

(2) he exercises control over the property, other than real property, unlawfully.

(b) Obtaining or exercising control over property is unlawful if:

(1) the actor obtains or exercises control over the property without the property owner's effective consent; or

(2) the property is stolen and the actor obtains or exercises control over the property knowing it was stolen by another.

(c) Theft is:

(1) a Class C misdemeanor if the value of the property stolen was $50 or less;

(2) a Class A misdemeanor if the value of the property stolen was more than $50 but less than $250;

(3) a felony of the third degree if:

(A) the value of the property stolen was $250 or more but less than $10,000; or

(B) regardless of value, the property was stolen from the person of another;

(4) a felony of the second degree if the value of the property stolen was $10,000 or more.

Sec. 31.04. THEFT OF SERVICE.

(a) An individual, corporation, or association commits an offense if, with intent to avoid payment for service he knows is provided only for compensation:

(1) he secures performance of the service; or

(2) having control over the disposition of services of others to which he is not entitled, he diverts their services to his own benefit or to the benefit of another not entitled to them.

(b) For purposes of this section, intent to avoid payment is presumed if the actor absconds without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service.

(c) An offense under this section is:

(1) A Class C misdemeanor if the value of the service stolen was $50 or less;

(2) A Class A misdemeanor if the value of the service stolen was more than $50 but less than $250;

(3) a felony of the third degree if the value of the service stolen was $250 or more but less than $10,000;

(4) a felony of the second degree if the value of the service stolen was $10,000 or more.

Sec. 31.05. PRESUMPTION FOR THEFT BY CHECK.

(a) If the actor obtains property or secures performance of service by issuing or passing a check or similar sight order for the payment of money, when 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 then outstanding, his intent to deprive the owner of property under Section 31.03 (theft) or to avoid payment for service under Section 31.04 (theft of service) is presumed (except in the case of a post-dated check or order) if:

(1) he has no account with the bank or other drawee at the time he issues the check or order; or

(2) payment is refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer fails to make good within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2), notice may be in writing, sent by registered or certified mail with return receipt requested or by telegram, and addressed to the issuer at his address shown:

(1) on the check or order; or

(2) on the records of the bank or other drawee; or

(3) on the records of the person to whom the check or order has been issued or passed.

(c) If 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 state from establishing the requisite intent by direct evidence.

Sec. 31.06. UNAUTHORIZED USE OF AUTOMOBILE OR OTHER VEHICLE.

(a) An individual, corporation, or association 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 Class A misdemeanor.

Sec. 31.07. VALUE.

(a) Subject to the additional criteria of Subsections (b)-(d), value under this chapter is:

(1) the market value of the property or service at the time and place of the offense; or

(2) if the market value of 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 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 ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of more than $50 but less than $250.

(d) If the actor gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or value of the interest 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.

Sec. 31.08. AGGREGATION OF AMOUNTS INVOLVED IN THEFT.

Amounts stolen pursuant to one scheme or course of conduct, whether from the same or several owners and whether at the same or different times, constitute a single criminal episode and may be aggregated in determining the grade of the offense.

Sec. 31.09. 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 also has an interest that the actor is not entitled to infringe.

Sec. 31.10. CLAIM OF RIGHT.

It is a defense to prosecution under this chapter that the actor:

(1) acted under an honest claim of right to the property or service involved; or

(2) acted in the honest belief that he had the right to obtain or exercise control over the property or service as he did; or

(3) obtained or exercised control over property or service honestly believing that the owner, if present, would have consented.

Sec. 31.11. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this

chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 32. FRAUD

Subchapter A. General Provisions

Section

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SUBCHAPTER A. GENEPAL PROVISIONS

Sec. 32.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Owner" means a person other than the actor who has possession of property, or any interest other than a mortgage, deed of trust, or security interest in property, even if the possession or interest is unlawful.

(3) "Property" means:

(A) real property; or

(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) "Service" includes:

(A) labor and professional service; and

(B) telecommunication, public utility, and transportation service; and

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(5) "Steal" means to acquire property or service by theft.

Sec. 32.02. VALUE.

(a) Subject to the additional criteria of Subsections (b)-(d), value under this chapter is:

(1) the market value of the property or service at the time and place of the offense; or

(2) if the market value of 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 ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of less than $250.

(d) If the actor 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 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.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD.

Amounts obtained in violation of this chapter pursuant to one scheme or course of conduct, whether from the same or several sources and whether at the same or different times,

constitute a single criminal episode and may be aggregated in determining the grade of the offense.

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY.

(a) An individual, corporation, or association commits an offense if he forges a writing with intent to defraud or harm another.

(b) 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; or

(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; or

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Subdivision (A); or

(C) to possess a writing that is forged within the meaning of Subdivision (A) with intent to utter it in a manner specified in Subdivision (B).

(2) "Writing" includes printing or any other method of recording information; money, coins, tokens, stamps, seals, credit cards, badges, trademarks; and symbols of value, right, privilege, or identification.

(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 second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against any other person.

(e) An offense under this section is a felony of the third degree if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument.

Sec. 32.22. CRIMINAL SIMULATION.

(a) An individual, corporation, or association commits criminal simulation if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have; or

(2) he sells, passes, or otherwise utters an object so made or altered; or

(3) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(4) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) Criminal simulation is a Class A misdemeanor.

SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD ABUSE.

(a) An individual, corporation, or association commits an offense if:

(1) with intent to obtain property or service, he uses a credit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has been revoked or cancelled; or

(2) with intent to obtain property or service, he uses the pretended number or description of a fictitious credit card; or

(3) with intent to defraud or harm any person, he uses an expired credit card to obtain property or service; or

(4) he receives property or service that he knows has been obtained in violation of Subsection (a)(1), (a)(2), or (a)(3); or

(5) he steals a credit card or, with knowledge that it has been stolen, receives a credit card, with intent to use it, or to sell it, or to transfer it to a person other than the issuer or the cardholder; or

(6) he buys a credit card from a person whom he knows is not the issuer; or

(7) not being the issuer, he intentionally or knowingly sells a credit card; or

(8) he intentionally or knowingly uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay; or

(9) not being the cardholder, and without effective consent of the cardholder, he signs or writes his name or the name of another on a credit card with intent to use it; or

(10) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them

without the effective consent of the issuer. For purposes of this subdivision, a credit card is "incomplete" if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted, or written on it.

(b) It is presumed that a person who uses a revoked or cancelled credit card has knowledge that the card has been revoked or cancelled if he has received notice of revocation or cancellation from the issuer. For purposes of this subsection, "notice" includes 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, 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.

(c) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or service on credit. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date on it, after that date has passed.

(d) Except as provided in Subsections (e), (f), and (g), an offense under this section is a Class A misdemeanor.

(e) An offense under Subsection (a)(1), (a)(2), or (a)(3) is a felony of the third degree if the value of the property or service obtained was $250 or more.

(f) An offense under Subsection (a)(5) or (a)(6) is a felony of the third degree if the state alleges and proves that during any consecutive 12-month period the actor stole or received, under Subsection (a)(5), or bought, under Subsection (a)(6), two or more credit cards issued in the names of two or more other persons.

(g) An offense under Subsection (a)(10) is a felony of the third degree.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT.

(a) An individual, corporation, or association commits an offense if he intentionally, knowingly, or recklessly makes

a materially false or misleading written statement to obtain property or credit for himself or another.

(b) For purposes of this section, "credit" includes:

(1) a loan of money; and

(2) furnishing property or services on credit; and

(3) extending the due date of an obligation; and

(4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit; and

(5) a line or letter of credit; and

(6) a credit card, as defined in Section 32.31 (credit card abuse).

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

Sec. 32.33. HINDERING SECURED CREDITORS.

(a) An individual, corporation, or association 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, transfers, or otherwise harms or reduces the value of the property.

(b) 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.

(c) For purposes of this section, a person is presumed to intend to hinder enforcement of the security interest or lien if he fails, when any part of the debt secured by the security interest or lien is due:

(1) to pay the part then due; or

(2) to deliver possession of the property on demand by the secured party.

(d) Except as provided in Subsection (e), an offense under this section is a Class A misdemeanor.

(e) If the actor removes the property, the offense is a felony of the third degree.

Sec. 32.34. FRAUD IN INSOLVENCY.

(a) An individual, corporation, or association commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors; or

(2) he intentionally falsifies any writing or record relating to the property, or any claim against the debtor; or

(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.

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

Sec. 32.35. RECEIVING DEPOSIT, PREMIUM, OR INVESTMENT IN FAILING FINANCIAL INSTITUTION.

(a) An officer, manager, or other person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:

(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or

(2) it is about to suspend operations or go into receivership.

(b) It is a defense to prosecution under this section that the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution.

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

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK.

(a) An individual, corporation, or association 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 has no account with the bank or other drawee

at the time he issues the check or order; or

(2) payment is refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer fails to make good within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram, and addressed to the issuer at his address shown:

(1) on the check or order; or

(2) on the records of the bank or other drawee; or

(3) on the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

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

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES.

(a) An individual, corporation, or association 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; or

(2) selling less than the represented quantity of a property or service; or

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure; or

(4) selling an adulterated or mislabeled commodity; or

(5) passing off property or service as that of another; or

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand; or

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another; or

(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; or

(9) representing the price of property or service

falsely or in a way tending to mislead; or

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction; or

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading written statement in connection with the sale of securities, or omitting information required by law to be disclosed in written documents relating to securities; or

(13) 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.

(b) 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; or

(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; and

(ii) an accurate description of each type of prize; and

(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.

But 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) a contest in connection with the sale of a commodity or service; and

(B) by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize; and

(C) 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 an offer to buy, and every disposition for value.

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

Sec. 32.43. COMMERCIAL BRIBERY.

(a) An individual, corporation, or association who is a fiduciary commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit as consideration:

(1) for violating a duty to a beneficiary; or

(2) for otherwise causing harm to a beneficiary by act or omission.

(b) An individual, corporation, or association commits an offense if he offers, confers, or agrees to confer, any benefit the acceptance of which is an offense under Subsection (a).

(c) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee; or

(B) a trustee, guardian, custodian, administrator executor, conservator, receiver, or similar fiduciary; or

(C) a lawyer, physician, accountant, appraiser, or other professional adviser; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

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

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST.

(a) An individual, corporation, or association 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 upon, 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) An individual, corporation, or association 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) 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's conduct is in connection with betting or wagering on the contest.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION.

(a) An individual, corporation, or association 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.

(b) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver; and

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(c) An offense under this section is a Class B misdemeanor unless the value of the property misapplied was $250 or more, in which event the offense is a Class A misdemeanor.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION.

(a) An individual, corporation, or association commits an offense if by deception and with intent to defraud or harm any person he causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) For purposes of this section, "deception" means:

(1) creating or confirming by words or conduct an impression of law or fact that is likely to affect the judgment of another in the transaction, that is false, and that the actor does not believe to be true; or

(2) 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; or

(3) preventing another from acquiring information likely to affect his judgment in the transaction; or

(4) 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

(5) 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.

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

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING.

(a) An individual, corporation, or association commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes printing or any other method of recording information; money, coins, tokens, stamps, seals, credit cards, badges, trademarks; and symbols of value, right, privilege, or identification.

(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 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.

TITLE 8. OFFENSES AGAINST THE STATE AND PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Section

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Sec. 36.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense; or

(B) to inflict bodily injury on the person threatened or another; or

(C) to accuse any person of any offense; or

(D) to expose any person to hatred, contempt, or ridicule; or

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election,

appointment, or employment.

(5) "Vote" means to cast a ballot in an election regulated by law.

Sec. 36.02. BRIBERY.

(a) An individual, corporation, or association commits bribery if he offers, confers, or agrees to confer any benefit upon a public servant, party official, or voter:

(1) with intent to influence the public servant or party official in a specific exercise of his official powers or a specific performance of his official duties; or

(2) with intent to influence the voter not to vote or to vote in a particular manner.

(b) A public servant or party official commits bribery if he solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will be influenced in a specific exercise of his official powers or a specific performance of his official duties.

(c) A voter commits bribery if he accepts or agrees to accept any benefit on the representation or understanding that he will not vote or will vote in a particular manner.

(d) Bribery is a felony of the third degree.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER.

(a) An individual, corporation, or association commits an offense if by means of coercion:

(1) he influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty; or

(2) he 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 the offense is felony of the third degree.

Sec. 36.04. IMPROPER INFLUENCE.

(a) An individual, corporation, or association 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 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.

Sec. 36.05. TAMPERING WITH WITNESS.

(a) An individual, corporation, or association commits an offense if he offers, confers, or agrees to confer any benefit upon a witness or prospective witness in an official proceeding, or coerces a witness or prospective witness in an official proceeding, with intent to influence the witness:

(1) to testify falsely; or

(2) to withhold any testimony, information, document, or thing; or

(3) to elude legal process summoning him to testify or supply evidence; or

(4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he 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) An offense under this section is a felony of the third degree.

Sec. 36.06. RETALIATION FOR PAST OFFICIAL ACTION.

(a) An individual, corporation, or association commits an offense if he harms a public servant or former public servant by any unlawful act in retaliation for anything the public servant did in his official capacity.

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

Sec. 36.07. COMPENSATION FOR PAST OFFICIAL BEHAVIOR.

(a) An individual, corporation, or association commits an offense if he offers, confers, or agrees to confer any benefit upon a public servant for the public servant's having exercised his official powers or performed his official duties in favor of the actor or another.

(b) A public servant commits an offense if he solicits, accepts, or agrees to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

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

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, or who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decisions, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in any matter pending before or contemplated by the legislature or an agency of the legislature.

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

Sec. 36.09. OFFERING GIFT TO PUBLIC SERVANT.

(a) An individual, corporation, or association commits an offense if he offers, confers, or agrees to confer any benefit upon 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.

Sec. 36.10. EXCEPTIONS AND DEFENSES.

(a) It is an exception to the application of Sections 36.07 (compensation for past official behavior), 36.08 (gift to public servant), and 36.09 (offering gift to public servant) that the benefit involved is a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled.

(b) It is a defense to prosecution under Sections 36.07 (compensation for past official behavior), 36.08 (gift to public

servant), and 36.09 (offering gift to public servant) that the benefit involved was:

(1) 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; or

(2) a trivial benefit incidental to personal, professional, or business contacts, which involves no substantial risk of undermining official impartiality; or

(3) a contribution made under the election laws for the political campaign of an elective public servant when he is a candidate for nomination or election to public office.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Section

37.01 Chapter Definitions
37.02 Perjury
37.03 Aggravated Perjury
37.04 Materiality
37.05 Retraction
37.06 Inconsistent Statements
37.07 Irregularities No Defense
37.08 False Report To Peace Officer
37.09 Tampering with or Fabricating Physical Evidence
37.10 Tampering with Governmental Record
37.11 Impersonating Public Servant
37.12 Impersonating Peace Officer

Sec. 37.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Governmental record" means anything:

(A) belonging to, received, or kept by government for information; or

(B) required by law to be kept by others for information of government.

(2) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(3) "Statement" means any representation of fact.

Sec. 37.02. PERJURY.

(a) An individual, corporation, or association commits perjury if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath, or swears to the truth of a false statement previously made; and

(2) the statement is required or authorized by law

to be made under oath.

(b) Perjury is a Class A misdemeanor.

Sec. 37.03. AGGRAVATED PERJURY.

(a) An individual, corporation, or association commits aggravated perjury if he commits perjury as defined in Section 37.02, and:

(1) the false statement is made during or in connection with an official proceeding; and

(2) the false statement is material.

(b) Aggravated perjury is a felony of the third degree.

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 for 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.

Sec. 37.05. RETRACTION.

It is a defense to prosecution for 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.

Sec. 37.06. INCONSISTENT STATEMENTS.

An information or indictment for perjury or aggravated perjury 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.

Sec. 37.07. IRREGULARITIES NO DEFENSE.

(a) It is no defense to prosecution for perjury or 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 for perjury or 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.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER.

(a) An individual, corporation, or association commits an offense if:

(1) he reports to a peace officer an offense or incident within the officer's concern knowing that the offense or incident did not occur; or

(2) he makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

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

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.

(a) An individual, corporation, or association commits an offense if, knowing that an investigation or official proceeding is pending or in progress:

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

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD.

(a) An individual, corporation, or association commits an offense if:

(1) he knowingly makes a false entry in, or false alteration of, a governmental record; or

(2) he makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) he intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT.

(a) An individual, corporation, or association commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely upon his pretended official acts.

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

Sec. 37.12. IMPERSONATING PEACE OFFICER.

(a) An individual, corporation, or association commits an offense if he impersonates a peace officer with intent to deceive another.

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

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Section

38.01 Chapter Definitions
38.02 Failure to Identify as Witness
38.03 Resisting Stop, Frisk, Halt, Arrest, or Search
38.04 Evading Arrest
38.05 Hindering Apprehension or Prosecution
38.06 Compounding
38.07 Escape
38.08 Permitting or Facilitating Escape
38.09 Effect of Unlawful Custody
38.10 Implements for Escape
38.11 Bail Jumping and Failure to Appear
38.12 Barratry
38.13 Preemption

Sec. 38.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Complaining witness" means a person who signs a criminal complaint.

(2) "Custody" means under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

Sec. 38.02. FAILURE TO IDENTIFY AS WITNESS.

(a) An individual commits an offense if he intentionally refuses to report or gives a false report of his name and present or last address to a peace officer who has lawfully stopped him under Code of Criminal Procedure Article 14.01, Section 2(b) or (c)(2) (stopping person at scene of offense) and demanded the information.

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

Sec. 38.03. RESISTING STOP, FRISK, HALT, ARREST, OR SEARCH.

(a) An individual or corporation 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 a stop, frisk, halt, arrest, or search of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the stop, frisk, halt, arrest, or search was unlawful.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor unless the actor resists a stop or frisk, in which event the offense is a Class B misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the stop, frisk, halt, arrest, or search.

Sec. 38.04. EVADING ARREST.

(a) An individual commits an offense if he intentionally flees from a person he knows is a peace officer who he knows is attempting to arrest him.

(b) It is an exception to the application of this section that the attempted arrest is unlawful.

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

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION.

(a) An individual, corporation, or association commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense:

(1) he harbors or conceals the other; or

(2) he provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) he warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under this section that the actor was the spouse, parent, child, or brother or sister of the offender.

(c) 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.

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

Sec. 38.06. COMPOUNDING.

(a) An individual, corporation, or association commits an offense if he solicits, accepts, or agrees to accept any benefit in consideration of refraining from reporting to a peace officer the commission or suspected commission of an offense.

(b) A complaining witness commits an offense if he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

(c) It is a defense to prosecution under this section that the benefit was solicited or accepted by the victim and did not exceed an amount the victim believed to be due as restitution or indemnification for economic loss caused by the offense.

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

Sec. 38.07. ESCAPE.

(a) An individual arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

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

(1) the actor was charged with or convicted of a felony; or

(2) the actor was confined in a penal institution; or

(3) the actor used or threatened to use a deadly weapon to effect his escape.

Sec. 38.08. PERMITTING OR FACILITATING ESCAPE.

(a) An official or employee of an institution, which is responsible for maintaining persons in custody, commits an offense if he intentionally, knowingly, or recklessly permits or facilitates the escape of a person in custody.

(b) An individual, corporation, or association commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

(1) an allegation or adjudication of delinquency; or

(2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

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

(1) the person in custody was charged with or convicted of a felony; or

(2) the person in custody was confined in a penal institution; or

(3) the actor used or threatened to use a deadly weapon to effect the escape; or

(4) the offense under Subsection (a) was committed intentionally.

Sec. 38.09. EFFECT OF UNLAWFUL CUSTODY.

It is no defense to prosecution under Section 38.07 (escape) or 38.08 (facilitating escape) that the custody was unlawful.

Sec. 38.10. IMPLEMENTS FOR ESCAPE.

(a) An individual, corporation, or association commits an offense if, with intent to facilitate escape, he introduces into a penal institution, or provides an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a Class A misdemeanor unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the third degree.

Sec. 38.11. BAIL JUMPING AND FAILURE TO APPEAR.

(a) An individual or corporation lawfully released from custody, with or without bail, on condition that he subsequently appear at a specified time and place, commits an offense if he intentionally or knowingly fails to appear at that time and place.

(b) It is an exception to the application of this section that the appearance is required as an incident of probation or parole.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear at the specified time and place.

(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 and he intentionally failed to appear.

Sec. 38.12. BARRATRY.

(a) An individual, corporation, or association commits barratry if, with intent to obtain a benefit for himself or to harm another:

(1) he institutes any suit or claim in which he knows he has no interest; or

(2) he institutes any suit or claim that he knows is false; or

(3) he solicits employment to prosecute or defend a suit or to collect a claim.

(b) Barratry is a Class A misdemeanor.

Sec. 38.13. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this

chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 39. ABUSE OF OFFICE

Section

39.01 Official Misconduct
39.02 Official Oppression
39.03 Misuse of Official Information

Sec. 39.01. OFFICIAL MISCONDUCT.

(a) A public servant commits an offense if, with intent to obtain a benefit for himself or to harm another, he intentionally or knowingly:

(1) commits an act relating to his office or employment that constitutes an unauthorized exercise of his official power; or

(2) commits an act under color of his office or employment that exceeds his official power; or

(3) refrains from performing a duty that is imposed on him by law or that is clearly inherent in the nature of his office or employment; or

(4) violates a law relating to his office or employment.

(b) For purposes of Subsection (a)(2), a public servant commits an act under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

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

Sec. 39.02. OFFICIAL OPPRESSION.

(a) A public servant acting under color of his office or employment commits an offense if:

(1) he intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or

(2) he intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

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

Sec. 39.03. MISUSE OF OFFICIAL INFORMATION.

(a) A public servant commits an offense if, in reliance on information to which he has access in his official capacity and which has not been made public:

(1) he acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) he speculates or aids another to speculate on the basis of the information.

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

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Section

42.01 Disorderly Conduct
42.02 Riot
42.03 Obstructing Highway or Other Passageway
42.04 Defense When Conduct Consists of Speech or Other Expression
42.05 Disrupting Meeting or Procession
42.06 False Alarm or Report
42.07 Harassment
42.08 Public Intoxication
42.09 Desecration of Venerated Object
42.10 Abuse of Corpse
42.11 Cruelty to Animals
42.12. Preemption

Sec. 42.01. DISORDERLY CONDUCT.

(a) An individual or corporation commits disorderly conduct if he intentionally or knowingly:

(1) makes a coarse and obviously offensive utterance, gesture, or display in a public place; or

(2) creates, by chemical means, a noxious and unreasonable odor in a public place; or

(3) abuses or threatens a person in a public place in an obviously offensive manner; or

(4) makes unreasonable noise in a public place, or near a private residence that he has no right to occupy; or

(5) fights with another in a public place; or

(6) discharges a firearm in a public place; or

(7) displays a deadly weapon in a public place in a manner calculated to alarm.

(b) It is a defense to prosecution under Subsection (a)(3) that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, "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. 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 the private residence.

(d) An offense under Subsections (a)(1)-(a)(5) is a Class C misdemeanor; an offense under Subsection (a)(6) or (a)(7) is a Class B misdemeanor.

Sec. 42.02. RIOT.

(a) An individual or corporation commits an offense if he intentionally joins with three or more other persons in a violent course of disorderly conduct.

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

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(a) An individual or corporation commits an offense if without legal privilege he intentionally, knowingly, or recklessly:

(1) obstructs a highway; street; sidewalk; railway; waterway; elevator, aisle, or hallway 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, 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 he knows to be 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 passageway; 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.

Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION.

(a) If conduct that would otherise violate Section 42.01(a)(4) (unreasonable noise) or 42.03 (obstructing highway) consists of speech or other communication, or of gathering with others to hear or observe such speech or communciation, 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 and substantially harmed the interests of others.

(b) The order required by this section may be given by a peace officer or, when a peace officer is not immediately available, by any person affected by the violation.

(c) It is a defense to prosecution under Section 42.01 (a)(4) or 42.03:

(1) that in circumstances in which this section requires an order, no order was given; or

(2) that an order, if given, was manifestly unreasonable in scope or content; or

(3) that an order, if given, was obeyed.

(d) For purposes of Subsection (c)(2):

(1) an order to move, addressed to a person whose speech or other communication attracts an obstructing audience, is manifestly unreasonable if the obstruction can be effectively remedied by police control of the size or location of the audience;

(2) an order to move, disperse, or otherwise remedy a violation is manifestly unreasonable if measures less restrictive of freedom of communication and assembly are readily available.

Sec. 42.05. DISRUPTING MEETING OR PROCESSION.

(a) An individual or corporation commits an offense if, intending to prevent or disrupt a lawful meeting, procession, or gathering, he significantly obstructs or interferes with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.

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

Sec. 42.06. FALSE ALARM OR REPORT.

(a) An individual or corporation commits an offense if he intentionally initiates or circulates a report of a present, past, or impending bombing, fire, offense, or other emergency, knowing that the report is false or baseless and intending or knowing:

(1) that it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or

(2) that it will place a person in fear of imminent serious bodily injury; or

(3) that it will prevent or interrupt the occupation of any building; room; place of assembly; place to which the public has access; or aircraft, automobile, or other form of conveyance.

(b) An offense under this section is a Class B misdemeanor unless the actor's intent is to prevent or interrupt the occupation of a building, a place to which the public has access,

or a facility of public transportation operated by a common carrier, in which event the offense is a Class A misdemeanor.

Sec. 42.07. HARASSMENT.

(a) An individual or corporation commits an offense if he intentionally:

(1) communicates by telephone or in writing in a coarse and obviously offensive manner, and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient; or

(2) threatens, by telephone or in writing, to take unlawful action against any person, and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient; or

(3) places one or more telephone calls anonymously, or at an inconvenient hour, or in an offensively repetitious manner, or without a legitimate purpose of communication, and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient.

(b) For purposes of Subsection (a)(3), a person places a telephone call as soon as he dials a complete telephone number, whether or not a conversation ensues.

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

Sec. 42.08. PUBLIC INTOXICATION.

(a) An individual commits an offense if he appears in a public place obviously under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

(b) For purposes of this section, "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.

(c) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or another.

(d) It is a defense to prosecution under this section that the alcohol or other substance was therapeutically administered.

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

Sec. 42.09. DESECRATION OF VENERATED OBJECT.

(a) An individual or corporation commits an offense if he intentionally desecrates:

(1) a public monument; or

(2) a place of worship or burial; or

(3) a state or national flag; or

(4) any other object of veneration owned by another.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

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

Sec. 42.10. ABUSE OF CORPSE.

(a) An individual or corporation commits an offense if without legal privilege he intentionally or knowingly:

(1) treats a corpse in a seriously offensive manner; or

(2) disinters or dissects a corpse that has been buried or otherwise interred.

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

Sec. 42.11. CRUELTY TO ANIMALS.

(a) An individual or corporation commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal; or

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody; or

(3) abandons unreasonably an animal in his custody; or

(4) transports or confines an animal in a cruel manner; or

(5) kills, injures, or administers poison to an animal belonging to another without legal privilege or the owner's effective consent; or

(6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the actor engaged only in accepted veterinary practices or bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and a wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

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

Sec. 42.12. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 43. PUBLIC INDECENCY

Subchapter A. Prostitution

Section

43.01 Subchapter Definitions

43.02 Prostitution

43.03 Promotion of Prostitution

43.04 Aggravated Promotion of Prostitution

43.05 Compelling Prostitution

Subchapter B. Obscenity

43.21 Definition of Obscene

43.22 Obscene Display

43.23 Obscenity

43.24 Sale, Distribution, or Display of Harmful Material to Minor

Subchapter C. Miscellaneous

43.31 Preemption

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. SUBCHAPTER DEFINITIONS.

In this subchapter, unless the context requires a different definition:

(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 or any part of the genitals of another person, or of the breast of a female 10 years or older, 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.

Sec. 43.02. PROSTITUTION.

(a) An individual commits prostitution if:

(1) he offers to engage, agrees to engage, or engages in sexual conduct in return for a fee payable to the actor; or

(2) he solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(2) whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) For purposes of Subsection (a)(2), "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.

(d) Prostitution is a Class C misdemeanor unless the actor has been convicted one or more times before under this section, in which event prostitution is a Class B misdemeanor.

Sec. 43.03. PROMOTION OF PROSTITUTION.

(a) An individual, corporation, or association commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he receives money or other property pursuant to an agreement to participate in the proceeds of prostitution.

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

Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION.

(a) An individual, corporation, or association commits an offense if he owns, invests in, finances, controls, supervises, or manages a continuing prostitution enterprise that uses two or more prostitutes.

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

Sec. 43.05. COMPELLING PROSTITUTION.

(a) An individual or corporation commits an offense if:

(1) he causes another by force, threat, or fraud to commit prostitution; or

(2) he causes a person younger than 16 years to commit prostitution.

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

SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITION OF OBSCENE.

(a) In this subchapter, unless the context requires a different definition, "obscene" means having as a whole a dominant theme:

(1) that appeals to a prurient interest in sex or excretion; and

(2) that is patently offensive because it affronts contemporary community standards relating to the description or representation of sex or excretion; and

(3) that is utterly without redeeming social value.

(b) For purposes of Subsection (a)(2), "community" may not encompass an area less than the territory of this state.

(c) In determining whether material is obscene under Subsection (a), the trier of facts shall consider the following factors among others:

(1) the character of the audience for which the

material was designed or to which it was directed;

(2) the predominant appeal of the material for ordinary adults or any special audience to which it was directed;

(3) the degree of acceptance of the material in this state;

(4) the purpose of the author, creator, publisher, or distributor;

(5) any artistic, literary, scientific, educational, or other merit of the material.

Sec. 43.22. OBSCENE DISPLAY.

(a) An individual, corporation, or association commits an offense if he knowingly displays an obscene photograph, drawing, or similar visual representation and is reckless about whether a person is present who will be offended or alarmed by the display.

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

Sec. 43.23. OBSCENITY.

(a) An individual, corporation, or association commits an offense if, knowing the matter is obscene:

(1) he sells, commercially distributes, or possesses for sale or commercial distribution an obscene writing, picture, recording, or other representation or embodiment of the obscene; or

(2) he presents or directs an obscene play, dance, or performance or participates in that portion of the play, dance, or performance that makes it obscene.

(b) It is an exception to the application of this section:

(1) that the obscene material is possessed by a person having scientific, educational, governmental, or other similar justification; or

(2) that the obscene matter is distributed or presented to personal associates of the actor.

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

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR.

(a) In this section, unless the context requires a different definition:

(1) "Minor" means an individual younger than 16 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor in sex or excretion; and

(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) For purposes of Subsection (a)(2)(B), "community" may not encompass an area less than the territory of this state.

(c) An individual, corporation, or association commits an offense if, knowing the material is harmful:

(1) he sells, distributes, or possesses for sale or distribution harmful material to a minor; or

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display.

(d) It is an exception to the application of this section:

(1) that the harmful material is distributed by a minor to his personal associates; or

(2) that the sale or distribution is by a person having scientific, educational, governmental, or other similar justification.

(e) It is a defense to prosecution under this section:

(1) that the sale or distribution was to a minor who the actor reasonably believed was 16 years or older; or

(2) that the sale or distribution was to a minor who was accompanied by his parent, guardian, or spouse, or by an adult who the actor reasonably believed was the minor's parent, guardian, or spouse.

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

SUBCHAPTER C. MISCELLANEOUS

Sec. 43.31. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Section

46.01 Chapter Definitions

46.02 Unlawful Possession of Weapon

46.03 Prohibited Weapons

46.04 Unlawful Sale of Firearm

46.05 Interstate Purchase

Sec. 46.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Club" means any 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.

(2) "Explosive weapon" means any explosive, incendiary, or poison gas:

(A) bomb;

(B) grenade;

(C) rocket;

(D) mine;

(E) shell, missile, or projectile

that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of springs or expanding gas, or any device readily convertible to that use.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm with a barrel length of less than 12 inches that is designed, made, or adapted to be fired with one hand.

(6) "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.

(7) "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.

(8) "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.

(9) "Rifle" means any firearm designed, made, or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed cartridge to fire a projectile through a rifled bore by a single function of the trigger.

(10) "Short barrel" means a barrel length of less than 16 inches for a rifle and 18 inches for a shotgun, or an overall firearm length of less than 26 inches.

(11) "Shotgun" means any firearm designed, made, or adapted to be fired from the shoulder and to use the energy of the explosive in a fixed shotgun shell to fire through a smooth-bore barrel either a number of ball shot or a single projectile by a single function of the trigger.

(12) "Switchblade knife" means any knife that has a blade that folds or closes into the handle or sheath, and:

(A) that opens automatically by pressure applied to a button or other device located on the handle; or

(B) that opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

Sec. 46.02. UNLAWFUL POSSESSION OF WEAPON.

(a) An individual or corporation commits an offense if:

(1) he possesses what he knows to be a firearm, a knife with a blade length exceeding five and one-half inches, or a club; or

(2) he possesses any deadly weapon with intent to employ it in the commission of an offense.

(b) It is a defense to prosecution under Subsection (a)(1) that the actor's possession:

(1) was incident to the performance of his official duty as a peace officer, a member of the armed forces or national guard, or as a guard employed by a penal institution; or

(2) was of a rifle or shotgun that was unloaded; or

(3) occurred at his:

(A) place of residence; or

(B) place of business; or

(C) premises; or

(4) was incident to engaging in lawful hunting, trapping, fishing, camping, or other lawful sporting activity, and:

(A) the weapon is a type reasonably necessary for or commonly used in the activity; and

(B) if the possession occurred in the course of proceeding to or from the activity, the conditions of Subdivisions (4)(B)(i) and (4)(B)(ii) or (4)(C) are satisfied; or

(5) was incident to transporting the weapon:

(A) in the course of business as a commercial carrier; or

(B) from one place or circumstance of lawful possession to another under the following conditions:

(i) the weapon was not concealed on or about the person; and

(ii) if the weapon is a firearm, it was unloaded; and

(iii) if the weapon is a handgun, knife, or club, the actor proceeded directly from his point of departure to his destination; or

(C) that was broken down in a nonfunctioning condition and could not be readily reassembled; or

(6) was incident to displaying the weapon in a public museum, exhibition, or to using it in a dramatic performance; or

(7) was brief and occurred as a consequence of having found or been given the weapon or having taken it from an aggressor.

(c) Unless otherwise provided by ordinance or order of a county commissioners court, it is a defense to prosecution under Subsection (a)(1) for possession of a firearm or club that the actor's possession was incident to engaging in a private patrol or guard service licensed by a governmental agency authorized by state law to license the service, if the possession occurred under the following conditions:

(1) the firearm or club was not concealed on or about the person, and, if worn, was in plain view; and

(2) the actor wore a distinctive uniform indicating that he was performing services as a guard or patrolman; and

(3) the possession occurred in the course of performance of the actor's duties as a guard or patrolman at his place of work.

(d) The defenses to unlawful possession of a handgun described in Subsections (b)(3)(B) and (C), (b)(4), (b)(5)(B) and (C), and (c) are not available to an actor identified in Subsection (e)(3).

(e) Except as provided in Subdivisions (1)-(3), an offense under Subsection (a)(1) is a Class B misdemeanor. An offense under Subsection (a)(1) is:

(1) a Class A misdemeanor if the actor's possession of a handgun occurred at a place open to the public where five or more persons were gathered or assembled; or

(2) a felony of the third degree if the actor's possession of a handgun occurred at a place open to the public where alcoholic beverages were served; or

(3) a felony of the third degree if:

(A) the actor possessed a handgun; and

(B) the actor has been convicted of a felony involving the intentional or knowing use or attempted use of force or a deadly weapon; and

(C) the handgun's possession occurred within five years after his:

(i) release from a penal institution; or

(ii) discharge from probation; or

(iii) conviction, if neither Subdivision (i) nor (ii) applies.

(f) An offense under Subsection (a)(2) is a Class A misdemeanor.

Sec. 46.03. PROHIBITED WEAPONS.

(a) An individual, corporation, or association commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a device principally designed, made, or adapted for delivering or shooting an explosive weapon;

(3) a machine gun;

(4) a short-barrel rifle or shotgun;

(5) a firearm silencer;

(6) a switchblade knife or knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct:

(1) was incident to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution; or

(2) was incident to engaging in a lawful commercial or business transaction with an organization identified in Subdivision (1); or

(3) was incident to using an explosive weapon in a manner reasonably related to a lawful industrial or commercial enterprise; or

(4) was incident to using the weapon in a manner reasonably related to a lawful dramatic performance or scientific research; or

(5) was incident to displaying the weapon in a public museum or exhibition.

(c) It is an affirmative defense to prosecution under this section, which the actor must prove by a preponderance of the evidence:

(1) that his conduct was incident to dealing with the weapon solely as a curio, ornament, or keepsake, and if the weapon is a type described in Subsection (a)(1)-(5), that it was in a nonfunctioning condition and could not readily be made operable; or

(2) that his possession was brief and occurred as a consequence of having found the weapon or taken it from an aggressor.

(d) An offense under Subsection (a)(1)-(5) is a felony of the second degree; an offense under Subsection (a)(6) is a Class B misdemeanor.

Sec. 46.04. UNLAWFUL SALE OF FIREARM.

(a) An individual, corporation, or association commits an offense if:

(1) he intentionally or knowingly sells a firearm to a child younger than 18 years; or

(2) he intentionally or knowingly makes a gift of a firearm to a child younger than 18 years without the consent of the child's custodial parent or guardian.

(3) he intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to a person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

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

Sec. 46.05. INTERSTATE PURCHASE.

If not otherwise prohibited by law, a Texas resident may purchase a rifle or shotgun in a state contiguous to Texas.

CHAPTER 47. GAMBLING

Section

47.01 Chapter Definitions
47.02 Gambling
47.03 Gambling Promotion
47.04 Aggravated Gambling Promotion
47.05 Possession of Gambling Device or Record
47.06 Possession of Slot Machine
47.07 Accomplice Witness: Testimony and Immunity
47.08 Preemption

Sec. 47.01. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Gambling" means risking anything of value for a profit whose return is to any degree contingent on chance, but does not include:

(A) a lawful business transaction; or

(B) playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(2) "Gambling bet" means anything of value risked in gambling.

(3) "Gambling device or record" means anything specially designed for use in gambling, or used primarily for gambling.

(4) "Gambling proceeds" means money used in gambling.

(5) "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, transport facilities, and shops.

(6) "Profit" means anything of value in addition to the gambling bet.

Sec. 47.02. GAMBLING.

(a) An individual, corporation, or association commits an offense if he knowingly engages in gambling.

(b) It is a defense to prosecution for gambling:

(1) that the actor engaged in gambling in a private place; and

(2) that no participant received any economic benefit other than personal winnings; and

(3) that, 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 C misdemeanor.

Sec. 47.03. GAMBLING PROMOTION.

(a) An individual, corporation, or association commits gambling promotion if he induces or aids another to engage in gambling, and:

(1) he intends to derive or derives an economic benefit other than personal winnings from the gambling; or

(2) he participates in the gambling and has, other than by virtue of skill or luck, a lesser risk of losing or greater chance of winning than one or more of the other participants.

(b) Gambling promotion is a Class A misdemeanor.

Sec. 47.04. AGGRAVATED GAMBLING PROMOTION.

(a) An individual, corporation, or association commits aggravated gambling promotion if he knowingly invests in, finances, owns, controls, supervises, manages, or participates in a gambling enterprise.

(b) For purposes of this section, "gambling enterprise" means two or more persons regularly engaged in gambling promotion as defined in Section 47.03.

(c) Aggravated gambling promotion is a felony of the third degree.

Sec. 47.05. POSSESSION OF GAMBLING DEVICE OR RECORD.

(a) An individual, corporation, or association commits an offense if he knowingly possesses a gambling device or record with intent to use it in gambling.

(b) It is a defense to prosecution under this section that the gambling device or record was possessed for use only

in connection with gambling in a private place where no participant received any economic benefit other than personal winnings and where, 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.

Sec. 47.06. POSSESSION OF SLOT MACHINE.

(a) An individual, corporation, or association commits an offense if he knowingly possesses a slot machine or an essential part of a slot machine.

(b) For purposes of this section, "slot machine" means a mechanical device designed or adapted for use in gambling:

(1) that has, as an essential part, a drum or reel with insignia thereon; or

(2) that is operated by means of the insertion of a coin, token, or other object.

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

Sec. 47.07. ACCOMPLICE WITNESS: TESTIMONY AND 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.

Sec. 47.08. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

CHAPTER 48. DRUGS

Section

48.01 Legislative Policy

48.02 Chapter Definitions

48.03 Addition of Drug by Regulation

48.04 Trafficking in Dangerous Drug
48.05 Dangerous Drug Defined
48.06 Trafficking in Abusable Drug
48.07 Abusable Drug Defined
48.08 Trafficking in Restricted Drug
48.09 Restricted Drug Defined
48.10 Trafficking with Minor
48.11 Possession of Dangerous or Abusable Drug
48.12 Possession of Drug Paraphernalia
48.13 Authorization Defense
48.14 Household Use Defense
48.15 Prosecution for Less Severe Offense
48.16 Preemption

Sec. 48.01 LEGISLATIVE POLICY.

(a) It is the policy of this state, as reflected by enactment of this chapter, to employ penal sanctions to control the dissemination of dangerous, abusable, and restricted drugs without undue restrictions on practioners of the healing arts, research, or legitimate manufacture or distribution, and with a view to facilitating medical, psychiatric, and social rehabilitation of addicts and other victims.

(b) It is also the policy of the state to ensure by this chapter that all agencies of the criminal justice system distinguish between those engaged in commercial exploitation, on the one hand, and those who engage in noncommercial distribution or who are experimenters or users, on the other hand, and that the courts in particular so distinguish in sentencing offenders under this chapter.

Sec. 48.02. CHAPTER DEFINITIONS.

In this chapter, unless the context requires a different definition:

(1) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium and opiate;

(B) any compound, manufacture, salt, derivative, or preparation of Opium or opiate;

(C) any substance (and any compound, manufacture, salt, derivative, or preparation thereof) that is chemically identical with any of the substances specified in Subdivisions (A) and (B).

(2) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(3) "Trafficks" means:

(A) transfer or administer a drug to another;

(B) prescribe a drug not in the course of professional practice;

(C) possess a drug with intent to transfer or administer it to another;

(D) produce a drug.

Sec. 48.03. ADDITION OF DRUG BY REGULATION.

A drug made subject to this chapter by regulation is deemed to be a restricted drug.

Sec. 48.04. TRAFFICKING IN DANGEROUS DRUG.

(a) An individual, corporation, or association commits an offense if he intentionally or knowingly trafficks in a dangerous drug.

(b) Except as provided in Subsection (c), an offense under this section is a felony of the second degree unless the actor has been convicted one or more times before of a felony of the first or second degree under this chapter, in which event the offense is a felony of the first degree.

(c) The court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a felony of the second degree if the actor has been convicted one or more times before of a felony under this chapter, or for a felony of the third degree if the actor has never before been convicted of a felony under this chapter, if the actor proves by a preponderance of the evidence at the sentencing hearing:

(1) that he did not act for profit or to further commercial distribution; and

(2) that he did not transfer or administer, or possess with intent to transfer or administer, the drug involved to a child younger than 18 years:

(A) when he knew or was reckless or criminally negligent in ascertaining the child's age; and

(B) when he was at least three years older than the child.

Sec. 48.05. DANGEROUS DRUG DEFINED.

For purposes of this chapter, "dangerous drug" means:

(1) Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers,

esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(i) Acetylmethadol;
(ii) Allylprodine;
(iii) Alphacetylmethadol;
(iv) Alphameprodine;
(v) Alphamethadol;
(vi) Benzethidine;
(vii) Betacetylmethadol;
(viii) Betameprodine;
(ix) Betamethadol;
(x) Betaprodine;
(xi) Clonitazene;
(xii) Dextromoramide;
(xiii) Dextrorphan;
(xiv) Diampromide;
(xv) Diethyliambutene;
(xvi) Dimenoxadol;
(xvii) Dimepheptanol;
(xviii) Dimethyliambutene;
(xix) Dioxaphetyl butyrate;
(xx) Dipipanone;
(xxi) Ethylmethylthiambutene;
(xxii) Etonitazene;
(xxiii) Etoxeridine;
(xxiv) Furethidine;
(xxv) Hydroxypethidine;
(xxvi) Ketobemidone;
(xxvii) Levomoramide;
(xxviii) Levophenacylmorphan;
(xxix) Morpheridine;
(xxx) Noracymethadol;
(xxxi) Norlevorphanol;
(xxxii) Normethadone;
(xxxiii) Norpipanone;
(xxxiv) Phenadoxone;
(xxxv) Phenampromide;
(xxxvi) Phenomorphan;
(xxxvii) Phenoperidine;
(xxxviii) Piritramide;
(xxxix) Proheptazine;
(xl) Properidine;
(xli) Racemoramide;
(xlii) Trimeperidine.

(2) Any of the following Opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) Acetorphine;
(ii) Acetyldihydrocodeine;
(iii) Benzylmorphine;
(iv) Codeine methylbromide;
(v) Codeine-N-Oxide;
(vi) Cyprenorphine;
(vii) Desomorphine;
(viii) Dihydromorphine;
(ix) Etorphine;
(x) Heroin;
(xi) Hydromorphinol;
(xii) Methydesorphine;
(xiii) Methylhydromorphine;
(xiv) Morphine methylbromide;
(xv) Morphine methylsulfonate;
(xvi) Morphine-N-Oxide;
(xvii) Myrophine;
(xviii) Nicocodeine;
(xix) Nicomorphine;
(xx) Normorphine;
(xxi) Pholcodeine;
(xxii) Thebacon.

(3) Any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

(i) 3, 4-methylenedioxy amphetamine;
(ii) 5-methoxy-3, 4-methylenedioxy amphetamine;
(iii) 3, 4, 5-trimethoxy amphetamine;
(iv) Bufotenine;
(v) Diethyltryptamine;
(vi) Dimethyltryptamine;
(vii) 4-Methyl-2, 5-Dimethoxyamphetamine;
(viii) Ibogaine;
(ix) Lysergic acid diethylamide;
(x) Mescaline;
(xi) N-ethyl-3-piperidyl benzilate;
(xii) N-methyl-3-piperidyl benzilate;
(xiii) Psilocybin;
(xiv) Psilocyn;
(xv) Tetrahydrocannabinols.

(4) Any of the following substances, other than those narcotic drugs included in the definitions of abusable and restricted drugs, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(i) Opium and opiate;

(ii) any salt, compound, derivative, or preparation of Opium or opiate;

(iii) any salt, compound, derivative, or preparation that is chemically equivalent or identical with any of the substances specified in Subdivisions (i) and (ii), other than the Isoquinoline Alkaloids of Opium;

(iv) opium poppy and poppy straw.

(5) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation:

(i) Alphaprodine;

(ii) Anileridine;

(iii) Bezitramide;

(iv) Dihydrocodeine;

(v) Diphenoxylate;

(vi) Fentanyl;

(vii) Isomethadone;

(viii) Levomethorphan;

(ix) Levorphanol;

(x) Metazocine;

(xi) Methadone;

(xii) Methadone - Intermediate, 4-Cyano-2-Dimethylamino-4, 4-Diphenyl Butane;

(xiii) Moramide - Intermediate, 2-Methyl-3-Morpholino-1, 1-Diphenyl-Propane-Carboxylic acid;

(xiv) Pethidine;

(xv) Pethidine - Intermediate - A, 4-Cyano-1-Methyl-4-Phenylpiperidine;

(xvi) Pethidine - Intermediate - B, Ethyl-4-Phenylpiperidine-4-Carboxylate;

(xvii) Pethidine - Intermediate - C, 1-Methyl-4-Phenylpiperidine-4-Carboxylic acid;

(xviii) Phenazocine;

(xix) Piminodine;

(xx) Racemethorphan;

(xxi) Racemorphan.

(6) Any of the following substances, other than those included in the definitions of abusable and restricted drugs, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(i) Cocoa leaves;

(ii) any salt, compound, derivative, or preparation of Coca leaves;

(iii) any salt, compound, derivative, or preparation that is chemically equivalent or identical with any of the substances specified in Subdivisions (i) and (ii), other than decocainized Coca leaves or extractions of Coca leaves, which extractions do not contain Cocaine or Ecognine.

(7) Any material, compound, mixture, or preparation, other than that described in Section 48.07(1) (five or fewer pills), containing any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(i) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(ii) Phenmetrazine and its salts;

(iii) Methamphetamine, its salts, isomers, and salts of isomers;

(iv) Methylphenidate.

(8) Any material, compound, mixture, or preparation, other than that described in Section 48.07(1) (five or fewer pills), containing any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(i) any substance that contains any quantity of a derivative of Barbituric acid, or any salt of a derivative of Barbituric acid, other than those substances described in Section 48.07 (abusable drug);

(ii) Chlorhexadol;

(iii) Ethchlorvynol;

(iv) Glutethimide;

(v) Lysergic acid;

(vi) Lysergic acid amide;

(vii) Methyprylon;

(viii) Sulfondiethylmethane;

(ix) Sulfonethylemethane;

(x) Sulfonmethane.

Sec. 48.06. TRAFFICKING IN ABUSABLE DRUG.

(a) An individual, corporation, or association commits

an offense if he intentionally or knowingly trafficks in an abusable drug.

(b) Except as provided in Subsections (c) and (d), an offense under this section is a felony of the third degree unless the defendant has been convicted one or more times before of a felony under this chapter, in which event the offense is a felony of the second degree.

(c) The court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a felony of the third degree if the actor has been convicted one or more times before of a Class A misdemeanor or felony under this chapter, or for a Class A misdemeanor if the actor has never before been convicted of a Class A misdemeanor or felony under this chapter, if the actor proves by a preponderance of the evidence at the sentencing hearing:

(1) that he did not act for profit or to further commercial distribution; and

(2) that he did not transfer or administer, or possess with intent to transfer or administer, the drug involved to a child younger than 18 years:

(A) when he knew or was reckless or criminally negligent in ascertaining the child's age; and

(B) when he was at least three years older than the child.

(d) If the actor is found guilty of prescribing or producing an abusable drug under this section, the court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a Class A misdemeanor if the actor has been convicted one or more times before under this chapter of any offense, or for a Class B misdemeanor if the actor has never before been convicted under this chapter, if the actor proves by a preponderance of the evidence at the sentencing hearing that he did not intend to transfer or administer the drug to another.

Sec. 48.07. ABUSABLE DRUG DEFINED.

For purposes of this chapter, "abusable drug" means:

(1) A total of five or fewer tablets or capsules, or a total combination of five tablets and capsules, each tablet or capsule containing not more by weight of any dangerous drug defined in Section 48.05(7) and (8) (stimulants and depressants) than is contained in the highest dosage tablet or capsule containing such drug manufactured for oral use by a manufacturer registered under Section 303(a) or (d) of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(2) Any material, compound, mixture, or preparation containing any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(i) Barbital;
(ii) Chloral Betaine;
(iii) Chloral hydrate;
(iv) Ethchlorvynol;
(v) Ethinamate;
(vi) Methohexital;
(vii) Methylphenobarbital;
(viii) Paraldehyde;
(ix) Petrichloral;
(x) Phencyclidine;
(xi) Phenobarbital.

(3) Nalorphine.

(4) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(i) not more than 1.8 grams of Codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an Isoquinoline Alkaloid of Opium;

(ii) not more than 1.8 grams of Codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) not more than 300 milligrams of Dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an Isoquinoline Alkaloid of Opium;

(iv) not more than 300 milligrams of Dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) not more than 1.8 grams of Dihydrocodeinone per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) not more than 300 milligrams of Ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) not more than 500 milligrams of Opium per 100 milliliters or per 100 grams, or not more than 25

milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Cannabis. For purposes of this chapter, "cannabis" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin; but does not include:

(A) the mature stalks of the plant;

(B) fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) any other compound, manufacture, salt, derivative, mixture, or preparation of the stalks (except the resin extracted therefrom), fiber, oil, or cake;

(E) the sterilized seed of the plant that is incapable of germination.

(6) Peyote.

Sec. 48.08. TRAFFICKING IN RESTRICTED DRUG.

(a) An individual, corporation, or association commits an offense if he knowingly trafficks in a restricted drug.

(b) It is an affirmative defense to prosecution under this section, which the actor must prove by a preponderance of the evidence, that he did not intend to transfer or administer the drug to another.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

(d) The court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a Class B misdemeanor, if the actor proves by a preponderance of the evidence at the sentencing hearing:

(1) that he did not act for profit or to further commercial distribution; and

(2) that he did not transfer or administer, or possess with intent to transfer or administer, the drug involved to a child younger than 18 years:

(A) when he knew or was reckless or criminally negligent is ascertaining the child's age; and

(B) when he was at least three years older than the child.

Sec. 48.09. RESTRICTED DRUG DEFINED.

For purposes of this chapter, "restricted drug" means:

(1) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which compound, mixture, or preparation includes one or more nonnarcotic active medicinal ingredients in sufficient

proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(i) not more than 200 milligrams of Codeine per 100 milliliters or per 100 grams;

(ii) not more than 100 milligrams of Dihydrocodeine per 100 milliliters or per 100 grams;

(iii) not more than 100 milligrams of Ethylmorphine per 100 milliliters or per 100 grams;

(iv) not more than 2.5 milligrams of Diphenoxylate and not less than 25 micrograms of Atropine Sulfate per dosage unit;

(v) not more than 100 milligrams of Opium per 100 milliliters or per 100 grams.

(2) Any material, compound, mixture, or preparation containing any quantity of Meprobamate that has a potential for abuse associated with a depressant effect on the central nervous system.

Sec. 48.10. TRAFFICKING WITH MINOR.

(a) An individual, corporation, or association commits an offense if he intentionally or knowingly transfers or administers, or possesses with intent to transfer or administer, a dangerous, abusable, or restricted drug to a child younger than 18 years, and:

(1) he knows or is reckless or criminally negligent in ascertaining the child's age; and

(2) he is at least three years older than the child.

(b) An offense under this section:

(1) is a felony of the first degree if:

(A) the offense involved a dangerous drug; or

(B) the offense involved an abusable drug and the actor has been convicted one or more times before of a felony of the first or second degree under this chapter;

(2) is a felony of the second degree if the offense involved an abusable drug and the actor has not been convicted before of a felony of the first or second degree under this chapter;

(3) is a felony of the third degree if the offense involved a restricted drug.

Sec. 48.11. POSSESSION OF DANGEROUS OR ABUSABLE DRUG.

(a) An individual, corporation, or association commits an offense if he knowingly possesses a usable quantity of a dangerous or abusable drug.

(b) Except as provided in Subsections (c) and (d), an offense under this section is a felony of the third degree unless the actor has been convicted one or more times of a felony under this chapter, in which event the offense is a felony of the second degree.

(c) If the actor is found guilty of possession of an abusable drug, the court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a felony of the third degree if the actor has been convicted one or more times before of a Class A misdemeanor or felony under this chapter, or for a Class A misdemeanor if the actor has never before been convicted of a Class A misdemeanor or felony under this chapter, if the actor proves by a preponderance of the evidence at the sentencing hearing:

(1) that he did not act for profit or to further commercial distribution; and

(2) that he did not transfer or administer, or possess with intent to transfer or administer, the drug involved to a child younger than 18 years:

(A) when he knew or was reckless or criminally negligent in ascertaining the child's age; and

(B) when he was at least three years older than the child.

(d) If the actor is found guilty of possession of an abusable drug, the court shall set aside the judgment of guilt, and enter judgment and sentence the actor for a Class A misdemeanor if the actor has been convicted one or more times before under this chapter of any offense, or for a Class B misdemeanor if the actor has never before been convicted under this chapter, if the actor proves by a preponderance of the evidence at the sentencing hearing that he did not intend to transfer or administer the drug to another.

Sec. 48.12. POSSESSION OF DRUG PARAPHERNALIA.

(a) An individual or corporation commits an offense if he possesses a hypodermic syringe, needle, or other instrument that has on or in it any quantity (including a trace) of a dangerous drug with intent to use it for administration of a dangerous drug by subcutaneous injection in a human being.

(b) An offense under this section is a felony of the third degree unless the actor has been convicted one or more times of a felony under this chapter, in which event the offense is a felony of the second degree.

Sec. 48.13. AUTHORIZATION DEFENSE.

(a) It is a defense to prosecution under this chapter that the alleged criminal conduct was authorized by [the regulatory law].

(b) It is an affirmative defense to prosecution under

this chapter, which the actor must prove by a preponderance of the evidence, that he reasonably believed the alleged criminal conduct was authorized by [the regulatory law].

Sec. 48.14. HOUSEHOLD USE DEFENSE.

It is a defense to prosecution under this chapter that the drug that is the subject of prosecution:

(1) was issued for the actor or for a member of his household by a practitioner, by a pharmacist under a prescription, or otherwise in compliance with [the regulatory law], and the actor transferred or administered the drug to a member of his household for use by a member of his household or possessed it for his personal use or for use of a member of his household; or

(2) was issued for an animal in the care of the actor or a member of his household by a practitioner, by a pharmacist under a prescription, or otherwise in compliance with [the regulatory law], and the actor transferred the drug to another for administration to an animal or possessed it for the transfer or administration to an animal.

Sec. 48.15. PROSECUTION FOR LESS SEVERE OFFENSE.

When this chapter authorizes the court to enter judgment of guilt and sentence for a lesser category of offense, the prosecuting attorney may initially prosecute for the lesser category of offense.

Sec. 48.16. PREEMPTION.

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

Section 2. CONFORMING AMENDMENTS: MULTIPLE PROSECUTIONS AND DOUBLE JEOPARDY. The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

Art. 3.04. CRIMINAL EPISODE.

In this Code, unless the context requires a different definition, "criminal episode" means all conduct, including criminal solicitation and criminal conspiracy, incident to the attempt or accomplishment of a single criminal objective, even though the harm is directed toward or inflicted upon more than one person.

Art. 21.24. JOINDER OF CERTAIN OFFENSES

(a) Two or more offenses may be joined in a single indictment, information, or complaint, with each offense stated in a separate count, if the offenses arise out of the same criminal episode.

(b) A count may contain as many separate paragraphs charging the same offense as the attorney who prepares it, acting in good faith, believes necessary, but no paragraph may charge more than one offense.

(c) A count is sufficient if any one of its paragraphs is sufficient. An indictment, information, or complaint is sufficient if any one of its counts is sufficient.

Art. 27.05. SPECIAL PLEA FOR DEFENDANT

A defendant's only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode, and that the former prosecution:

(1) resulted in acquittal, as that term is defined in Penal Code Section 3.04; or

(2) resulted in conviction, as that term is defined in Penal Code Section 3.04; or

(3) was improperly terminated, as that term is defined in Penal Code Section 3.04; or

(4) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

Art. 28.04. QUASHING CHARGE IN MISDEMEANOR

If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law unless the granting of the motion necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

Art. 28.05. QUASHING INDICTMENT IN FELONY

If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefore be discharged, but may immediately be recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced unless the granting of the motion necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

Art. 36.09. SEVERANCE OF DEFENDANT AND OFFENSES

Sec. 1. Severance on separate indictments

Two or more defendants who are jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to

one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the State. In cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance to the defendant whose joint trial would prejudice the other defendant or defendants.

Sec. 2. Severance of offenses arising out of the same criminal episode

(a) The court on written motion of the prosecuting attorney or defendant may sever one or more offenses if:

(1) the motion is filed before the trial begins and the court finds and states for the record that severance is appropriate to promote a fair determination of defendant's guilt or innocence of each offense; or

(2) the motion is filed during trial with the defendant's consent and the court finds and states for the record that severance is necessary to achieve a fair determination of defendant's guilt or innocence of each offense.

(b) In determining whether to sever offenses under Paragraph (a), the court shall consider whether, in view of the number of offenses joined and the complexity of the evidence offered or anticipated, the trier of facts will be able to distinguish the evidence and apply the law intelligently to each offense.

Art. 36.10. ORDER OF TRIAL FOLLOWING SEVERANCE OF DEFENDANTS

If a severance of defendants is ordered, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of trial.

Art. 36.11. DISCHARGE BEFORE VERDICT

If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged, but such discharge shall be no bar in any case to a prosecution before the proper court for any offense unless termination of the former prosecution was improper as defined in Penal Code Section 3.04.

Art. 37.07. CONTENT OF VERDICT

(a) The verdict in every criminal action must be general.

(b) If the plea is not guilty, the jury must find the defendant either guilty or not guilty, and if the indictment, information, or complaint contains more than one count, the

jury must make this finding on a separate verdict form as to each count.

(c) If there is a special plea on which a jury is to find, it must say in its verdict whether the allegations in the plea are true or untrue.

Art. 37.12. JUDGMENT ON VERDICT

(a) Except as provided in Paragraph (b), the court shall enter judgment immediately on each verdict of acquittal or conviction.

(b) In misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the court; but in no event shall the judgment be deferred for a longer period of time than six months. On expiration of the time fixed by the order of the court, the court or judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 43 of this Code. Provided further, that the court or judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his personal bond, or may require him to enter into bail bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day, set in the order and discharges the judgment in the manner provided by Chapter 43 of this Code; and for the enforcement of any judgment entered, all writs, processes and remedies of this Code are made applicable so far as necessary to carry out the provisions of this Article.

Art. 45.32. THE ONLY SPECIAL PLEA

The only special plea allowed is that defined in Article 27.05.

Section 3. CONFORMING AMENDMENTS: CRIMINAL RESPONSIBILITY OF CORPORATIONS AND ASSOCIATIONS. A new chapter is added to the Code of Criminal Procedure, 1965, to read as follows:

CHAPTER SEVENTEEN-A

CORPORATIONS AND ASSOCIATIONS

Article

17A.01	Application and Definitions
17A.02	Allegation of Name
17A.03	Summoning Corporation or Association
17A.04	Service on Corporation
17A.05	Service on Association
17A.06	Appearance
17A.07	Presence of Corporation or Association
17A.08	Probation
17A.09	Notifying Attorney General of Corporation's Conviction

Art. 17A.01. APPLICATION AND DEFINITIONS

(a) This Chapter sets out some of the procedural rules applicable to the criminal responsibility of corporations and associations. Where not in conflict with this Chapter, the other Chapters of this Code apply to corporations and associations.

(b) In this Code, unless the context requires a different definition:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "Association" means:

(A) a government or governmental subdivision or agency; or

(B) a trust or partnership, whether created or operated for profit or not for profit; or

(C) a group or organization of two or more persons having a joint or common economic interest or jointly or commonly promoting their individual economic interests, whether the group or organization was created or is operated for profit or not for profit.

(3) "High managerial agent" means:

(A) a partner in a partnership;

(B) an officer of a corporation or association;

(C) an agent (including a director or employee) 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.

(4) "Person," "he," and "him" include corporation and association.

Art. 17A.02. ALLEGATION OF NAME

(a) In alleging the name of a defendant corporation, it is sufficient to state in the complaint, indictment, or information the corporate name, or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

(b) In alleging the name of a defendant association, it is sufficient to state in the complaint, indictment, or information the association's name, or to state any name or designation by which the association is known or may be identified, or to state the name or names of one or more members of the association, referring to the unnamed members as "others." It is not necessary to allege the legal form of the association.

Art. 17A.03. SUMMONING CORPORATION OR ASSOCIATION

(a) When a complaint is filed or an indictment or information presented against a corporation or association, the court or clerk shall issue a summons to the corporation or association. The summons shall be in the same form as a capias except that:

(1) it shall summon the corporation or association to appear before the court named at the place stated in the summons; and

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of twenty days after it is served with summons, except when service is made upon the Secretary of State or Chairman of the State Board of Insurance, in which instance the summons shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of thirty days after the Secretary of State or Chairman of the State Board of Insurance is served with summons.

(b) No individual may be arrested upon a complaint, indictment, information, judgment, or sentence against a corporation or association.

Art. 17A.04. SERVICE ON CORPORATION

(a) Except as provided in Paragraph (d), a peace officer shall serve a summons on a corporation by personally delivering a copy of it to the corporation's registered agent. However, if a registered agent has not been designated, or cannot with reasonable diligence be found at the registered office, then the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Paragraph (a), or if the corporation is a foreign corporation that has no certificate of authority, then he shall serve the summons on the Secretary of State by personally delivering a copy of it to him, or to the Assistant Secretary of State, or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the Secretary of State shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office, or, if it is a foreign corporation, at its registered or principal office in the state or country under whose law it was incorporated.

(c) The Secretary of State shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Paragraph (b) together with the return receipt.

(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

Art. 17A.05. SERVICE ON ASSOCIATION

(a) Except as provided in Paragraph (b), a peace officer shall serve a summons on an association by personally delivering a copy of it:

(1) to a high managerial agent at any place where

business of the association is regularly conducted; or

(2) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, to any employee of suitable age and discretion at any place where business of the association is regularly conducted; or

(3) if the peace officer certifies on the return that he diligently but unsuccessfully attempted to serve a high managerial agent, or employee of suitable age and discretion, to any member of the association.

(b) The method of service on an association regulated under the Insurance Code is governed by that code.

Art. 17A.06. APPEARANCE

(a) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a district or county-level court:

(1) appearance is for the purpose of arraignment;

(2) the corporation or association has ten full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

(b) In all criminal actions instituted against a corporation or association, in which original jurisdiction is in a justice court or corporation court:

(1) appearance is for the purpose of entering a plea; and

(2) ten full days must elapse after the day of appearance before the corporation or association may be tried.

Art. 17A.07. PRESENCE OF CORPORATION OR ASSOCIATION

(a) A defendant corporation or association appears through counsel.

(b) If a corporation or association does not appear in response to summons, or appears but fails or refuses to plead:

(1) it is deemed to be present in person for all purposes; and

(2) the court shall enter a plea of not guilty in its behalf; and

(3) the court may proceed with trial, judgment, and sentencing.

(c) If, having appeared and entered a plea in response to summons, a corporation or association is absent without good cause at any time during later proceedings:

(1) it is deemed to be present in person for all purposes; and

(2) the court may proceed with trial, judgment, or sentencing.

Art. 17A.08. PROBATION

Sec. 1. Probation granted by court

(a) Following conviction or plea of guilty or nolo contendere, a court of record may suspend the imposition of all or part of the sentence and grant the corporation or association probation if the court finds, after considering the factors enumerated in Paragraph (b), that probation would best serve the interests of society and of the corporation or association.

(b) In determining whether to grant probation, the court shall consider the following factors among others:

(1) whether the corporation's or association's criminal conduct caused or threatened serious harm to another's person or property;

(2) whether the corporation or association planned or expected that its criminal conduct would cause or threaten serious harm to another's person or property;

(3) whether the victim induced or facilitated the corporation's or association's criminal conduct;

(4) whether there were substantial grounds tending to excuse the defendant's conduct, though insufficient to establish a legal defense;

(5) whether the corporation or association has made or will make restitution or reparation to the victim for the damage or injury sustained;

(6) whether the corporation or association has a history of prior criminal conduct, or has carried on its affairs in a law-abiding manner for a substantial period of time before commission of the present offense;

(7) whether the corporation's or association's criminal conduct was the result of circumstances unlikely to recur;

(8) whether the character and history of the corporation or association indicate that it is likely to commit another offense.

Sec. 2. Jury probation

(a) A defendant corporation or association may request the jury to recommend probation if it has never before been adjudged guilty of a felony, or granted probation following a judgment of guilt of a felony, in this or any other jurisdiction.

(b) A defendant corporation or association requests jury probation by filing a written motion with the court and serving a copy on the prosecuting attorney. The defendant corporation or association must state in the motion that it is eligible for jury probation under Paragraph (a), and a high managerial agent of the defendant corporation or association must swear to the truth of the statement. The motion must be filed, and the copy served, before the trial on the merits begins, or if the court sets a pretrial hearing, the motion must be filed and served at the hearing.

(c) If the defendant corporation or association is found guilty by the jury, the court shall conduct the sentencing hearing under Article 42.02, Section 2, before the jury that found defendant guilty. However, only legally competent evidence is admissible at the sentencing hearing before the jury on the probation issue.

(d) At the conclusion of the sentencing hearing the jury shall retire and determine whether to recommend probation. If the jury recommends probation, the court shall grant defendant corporation or association probation for a period and on conditions the court determines under Section 3. If the jury recommends against probation, the court may nevertheless grant probation, or it may sentence the defendant corporation or association to any punishment authorized by law.

Sec. 3. Conditions and period of probation

(a) The court granting probation shall determine the period and conditions of probation and supervise the corporation or association during probation. The court shall design the period and conditions to prevent the corporation or association from engaging in similar criminal conduct in the future. The conditions of probation must be reasonable and shall include, but are not limited to, the requirements that the corporation or association:

(1) commit no offense against the law of this or any other state or of the United States; and

(2) pay all costs of its trial; and

(3) pay all or so much of its fine as the court directs; and

(4) make restitution to each victim of its offense; and

(5) report periodically to the court through a high managerial agent on the business affairs and conduct of the corporation or association that are relevant to the terms of probation.

(b) A period of probation may not exceed:

(1) fifteen years from the date it was granted if the corporation or association was convicted of a capital felony or felony of the first degree;

(2) twelve years from the date it was granted if the corporation or association was convicted of a felony of the third degree;

(3) six years from the date it was granted if the corporation or association was convicted of a felony of the third degree;

(4) two years from the date it was granted if the corporation or association was convicted of a Class A misdemeanor.

(5) one year from the date it was granted if the corporation or association was convicted of a Class B misdemeanor.

(c) The court with probation jurisdiction over the corporation or association may terminate probation, and discharge the corporation or association under Section 4(a) before the period of probation expires, if warranted by the corporation's or association's conduct.

(d) The clerk of the court granting probation shall promptly furnish the corporation or association with a written statement of the period and conditions of its probation. If the period or conditions are later modified under Paragraph (e), the clerk of the modifying court shall promptly furnish the corporation or association with a written statement of the modifications. A high managerial agent of the corporation or association shall acknowledge in writing receipt of each statement furnished under this paragraph.

(e) After giving the corporation or association notice and an opportunity to be heard, the court with probation jurisdiction over the corporation or association may modify the period or conditions of probation if warranted by the corporation's or association's conduct.

Sec. 4. Discharge or revocation

(a) When a corporation or association satisfies the period and conditions of its probation, the court shall enter an order in the minutes of the court discharging the corporation or association from probation. After discharge the court may also set aside the judgment of conviction and dismiss the complaint, information, or indictment against the corporation or association. After the criminal action against the corporation or association is dismissed, the judgment of conviction may not be considered for any purpose except to determine the corporation's or association's entitlement to a future probation.

(b) If the court has probable cause to believe that a corporation or association has violated a condition of its probation, it shall summon the corporation or association to appear before it in the manner provided in Article 17A.03. Service of the summons and the corporation's or association's presence at the hearing are governed by Articles 17A.04, 17A.05, and 17A.07. When the corporation or association appears, the court without a jury shall hold a hearing on the alleged violation and after the hearing shall continue, modify, or revoke the probation as the evidence warrants. If the court revokes

the probation, it shall immediately pronounce sentence against the corporation or association.

Sec. 5. Appeal

When it is granted probation a corporation or association is entitled to appeal its judgment of conviction as in other cases. It is also entitled to appeal the court's revocation of probation under Section 4(b).

Art. 17A.09. NOTIFYING ATTORNEY GENERAL OF CORPORATION'S CONVICTION

If a corporation is convicted of an offense, or if a high managerial agent is convicted of an offense committed in the conduct of the affairs of the corporation, the court shall notify the attorney general in writing of the conviction when it becomes final and unappealable. The notice shall include:

(1) the corporation's name, and the name of the corporation's registered agent and the address of the registered office, or the high managerial agent's name and address, or both; and

(2) certified copies of the judgment and sentence and of the complaint, information, or indictment on which the judgment and sentence were based.

Section 4. CONFORMING AMENDMENTS: MENTAL INCOMPETENCY AND INSANITY. Article 46.02 of the Code of Criminal Procedure, 1965, is amended to read as follows:

Art. 46.02. INCOMPETENCY AND INSANITY

Part A. Incompetency

Section

1.01 Mental Incompetency to Proceed
1.02 Raising the Incompetency Issue Before Trial
1.03 Incompetency as Delay of Criminal Action
1.04 Commitment after Determination of Incompetency
1.05 Hearing on Restoration of Competency
1.06 Action after Hearing on Restoration of Competency
1.07 Release from Hospitalization on Patient's Application

Part B. Insanity

2.01 Notice of Insanity Defense
2.02 Separate Hearing on Insanity Issue
2.03 Determination of Insanity Issue
2.04 Determination of Need for Hospitalization
2.05 Release from Hospitalization on Patient's Application

Part C. Psychiatric Examination of Defendant

3.01 Appointment of Psychiatrist

3.02 Commitment for Psychiatric Examination
3.03 Report of Examination
3.04 Evidence Obtained During Examination
Part D. Release from Hospitalization by Hospital Authority
4.01 Release by Hospital Authority

PART A. INCOMPETENCY

Sec. 1.01. Mental incompetency to proceed

No person may be tried, sentenced, or executed if, as a result of mental disease or defect:

(1) he lacks the mental competency to understand the nature of the proceedings against him; or

(2) he lacks the mental competency to assist and participate in the proceedings against him.

Sec. 1.02. Raising the incompetency issue before trial

(a) After the indictment or information has been presented (or when pleading in a justice or corporation court), but before the trial on the merits begins, a defendant or his counsel, or the prosecuting attorney, may file with the court a written motion asserting that due to the defendant's mental disease or defect there is reason to doubt his mental competency to proceed. A defendant, his counsel, or the prosecuting attorney may file the motion after the trial on the merits begins if for good cause shown the mental condition of the defendant was not known or apparent before the trial on the merits began.

(b) Before acting on a motion challenging mental competency to proceed, the court shall state the consequences of the motion to the defendant.

Sec. 1.03. Incompetency as delay of criminal action

(a) When a defendant's mental competency to proceed is put in issue under Section 1.02, by evidence developed at trial, or by motion filed before sentencing or execution, the court shall determine the issue. If the defendant is awaiting execution of his death sentence, a district court of the county in which he is confined may determine the competency issue.

(b) If the mental competency issue is contested, the court shall hold a hearing and require the state to prove the defendant's mental incompetency to proceed by a preponderance of the evidence, unless the defendant raised the issue, in which event the defendant must prove his incompetency to proceed by a preponderance of the evidence.

(c) If a jury has been impaneled and the court determines the defendant mentally incompetent to proceed or orders a psychiatric examination before deciding the issue, the court may

declare a mistrial. Declaration of a mistrial does not constitute jeopardy nor does it prohibit the trial, sentencing, or execution of the defendant for the same offense after he has been determined mentally competent to proceed.

(d) Determination that the defendant is mentally incompetent to proceed does not prevent consideration and disposition of a legal objection to the prosecution that may be fairly decided without the defendant's personal participation.

Sec. 1.04. Commitment after determination of incompetency

(a) If the court determines that the defendant is mentally incompetent to proceed under Section 1.03 or 1.05, the court shall also determine whether because of mental disease or defect the defendant presently requires hospitalization because he is a danger to himself or others.

(b) If the commitment issue is contested, the court shall require the state to prove that the defendant requires hospitalization because he is a danger to himself or others by a preponderance of the evidence.

(c) If the court determines that because of mental disease or defect the defendant presently is a danger to himself or others, the court may commit the defendant to a state mental hospital or other facility until it is determined that he no longer requires hospitalization.

(d) The clerk of the court shall forward the commitment order to the institution together with certified copies of:

(1) the complaint, information, or indictment; and

(2) the report of examination filed under Section 3.03, if any; and

(3) a transcript of testimony on the hospitalization issue, if any.

(e) If the court does not hospitalize the defendant, the court may enter any order, other than to require hospitalization, necessary to facilitate the defendant's restoration to mental competency.

Sec. 1.05. Hearing on restoration of competency

(a) The court may order a restoration hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant if he has not been committed under Section 1.04, to determine if the defendant has become mentally competent to proceed. The court shall order a hearing if:

(1) the head of the institution to which the defendant was committed files the report specified in Section

1.07(c) certifying that the defendant is mentally competent to proceed; or

(2) a physician who has been treating the defendant files the report specified in Section 1.07(c) certifying that the defendant is mentally competent to proceed, if the defendant was not committed.

(b) At the hearing the state is required to prove that the defendant has become mentally competent to proceed by a preponderance of the evidence, unless the defendant raised the issue, in which event the defendant must prove his competency to proceed by a preponderance of the evidence. Both parties are entitled to present evidence, summon and cross-examine witnesses, and make opening and closing statements. If the defendant is not represented by counsel, the court shall appoint counsel, if authorized by Article 26.04, and allow adequate time for consultation and preparation. Counsel appointed under this section is entitled to compensation at the rate fixed by Article 26.05 for representing a felon or misdemeanant before a court of record.

Sec. 1.06. Action after hearing on restoration of competency

(a) If the court determines after a hearing under Section 1.05 or 1.07 that the defendant is mentally competent to proceed, the court shall resume the trial or sentencing proceedings or carry out the sentence. The court shall credit any time spent while committed in a state mental hospital or other facility against both the maximum term and any minimum term imposed.

(b) If the court determines that the defendant is mentally competent to proceed and if the court believes that so much time has elapsed since the original determination of incompetency that it would be unjust to resume the criminal action, the court may set aside the conviction, if any, dismiss the complaint, information, or indictment, and either order the defendant discharged or take appropriate steps to secure the civil commitment of the defendant.

(c) If, after the hearing held under Section 1.05 or 1.07, the court determines that the defendant remains mentally incompetent to proceed, the court shall commit or recommit the defendant or enter any new order necessary to facilitate the defendant's restoration to mental competency.

(d) A determination that the defendant has regained his mental competency is not admissible against the defendant on the issue of guilt.

Sec. 1.07. Release from hospitalization by court on patient's application

(a) Any time after the expiration of 90 days following the date of the commitment order, a patient committed under Section 1.04 (after a determination of incompetency) is entitled to apply to the committing court in writing for a hearing on the issue of whether he now requires hospitalization. Unless the court for good cause shown permits, the patient is not entitled to a subsequent hearing on the hospitalization issue for at least one year after the date of his immediately preceding hearing.

(b) On receipt of an application timely filed under Paragraph (a), the court shall direct the head of the institution in which the patient is hospitalized to prepare a current report of the patient's mental and physical condition. The court may also appoint one or more psychiatrists, not connected with the institution in which the patient is hospitalized, to report on the patient's current mental and physical condition. A psychiatrist appointed by the court is entitled to a reasonable fee for preparing the report, to be fixed by the court and paid from the general fund of the county in which the court is sitting. If the patient wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with a reasonable opportunity to examine the patient.

(c) The report of the patient's mental and physical condition shall include, but is not limited to:

(1) the name of each physician and any other expert who examined the patient; and

(2) a description of the nature, content, and extent of the examination and any tests conducted; and

(3) a summary of the patient's history while hospitalized in the institution, including a resume of treatment administered; and

(4) a diagnosis and prognosis of the patient's mental and physical condition; and

(5) an opinion on whether the patient suffers from a mental disease or defect and, if so, whether he is a danger to himself or others; and

(6) an opinion of the patient's mental competency to understand the nature of the proceedings against him and to assist and participate in the proceedings against him; and

(7) an opinion on whether the patient requires continued hospitalization.

(d) Each report of a patient's mental and physical condition prepared under this section shall be delivered to

the clerk of the court, who shall file it with the papers of the case and furnish a copy each to the prosecuting attorney and to counsel for the patient.

(e) On receipt of all reports required under Paragraph (b), the court shall conduct a hearing on the hospitalization issue. At the hearing the patient is required to prove his entitlement to discharge by a preponderance of the evidence, and all parties are entitled to present evidence, summon and cross-examine witnesses, and make opening and closing statements. If the patient is not represented by counsel, the court shall appoint counsel, if authorized by Article 26.04, and allow adequate time for consultation and preparation. Counsel appointed under this section is entitled to compensation at the rate fixed by Article 26.05 for representing a felon or misdemeanant before a court of record.

(f) If the court determines after the hearing that the patient no longer requires hospitalization (because he no longer suffers from a mental disease or defect or is no longer a danger to himself or others), the court shall proceed under Section 1.06 when the judgment becomes final. If the court determines that the patient requires further hospitalization, the court shall recommit the patient when the judgment becomes final.

PART B. INSANITY

Sec. 2.01. Notice of insanity defense

(a) A defendant planning to offer evidence of mental disease or defect to establish insanity shall enter a plea of "not guilty by reason of insanity" at least 10 days before trial begins, or if the court sets a pretrial hearing, the defendant shall enter the plea during the hearing. However, the court for good cause shown may permit entry of the plea at a later time determined by the court.

(b) Before accepting a plea of "not guilty by reason of insanity," the court shall state the consequences of the plea to the defendant.

(c) Except in extenuation or mitigation during the sentencing hearing, evidence of mental disease or defect is not admissible unless the plea of "not guilty by reason of insanity" is timely entered under Paragraph (a).

Sec. 2.02. Separate hearing on insanity issue

(a) When he enters his plea of not guilty by reason of insanity under Section 2.01(a), the defendant may request the court in writing to order a separate hearing on the insanity issue before a different jury than the one that determines the guilt or innocence issue.

(b) If the defendant properly requests it under Paragraph (a), the court shall order separate hearings on the insanity and guilt or innocence issues before different juries. The court may determine the order of the hearings in its discretion.

(c) If the court orders a separate hearing on the insanity issue held first, the insanity issue may not be relitigated during the hearing on guilt or innocence. However, evidence of mental disease or defect is admissible during the hearing on guilt or innocence if relevant to negate the culpable mental state required for the offense charged and, if such evidence is admitted, the finding of sanity from the first hearing is also admissible.

Sec. 2.03. Determination of insanity issue

(a) The defendant has the burden of proving his insanity by a preponderance of the evidence.

(b) When the insanity issue is submitted, the trier of facts shall determine, and include in the verdict or judgment or both, whether the defendant was suffering from a mental disease or defect and if so whether at the time of the alleged conduct he lacked capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law he allegedly violated.

Sec. 2.04. Determination of need for hospitalization

(a) If the defendant is determined not guilty by reason of insanity, the trier of facts shall determine, and include in the verdict or judgment or both, whether the defendant because of mental disease or defect presently requires hospitalization because he is a danger to himself or others.

(b) If the trier of facts determines that the defendant requires hospitalization, the court shall commit the defendant to a state mental hospital or other facility until it is determined that he no longer requires hospitalization.

(c) The clerk of the court shall forward the commitment order to the institution together with certified copies of:

(1) the complaint, information, or indictment; and

(2) the report of examination filed under Section 3.03; and

(3) a transcript of testimony on the hospitalization issue.

Sec. 2.05. Release from hospitalization on patient's application

(a) Any time after the expiration of one year following the date of the commitment order, a patient committed under Section 2.04 (after a determination of not guilty by reason of insanity) is entitled to apply to the committing court

in writing for a hearing on the issue of whether he now requires hospitalization. Unless the court for good cause shown permits, the patient is not entitled to a subsequent hearing on this issue for at least two years after the date of his immediately preceding hearing.

(b) On receipt of an application timely filed under Paragraph (a), the court shall direct the head of the institution in which the patient is hospitalized to prepare a current report of the patient's mental and physical condition. The court may also appoint one or more psychiatrists, not connected with the institution in which the patient is hospitalized, to report on the patient's current mental and physical condition. A psychiatrist appointed by the court is entitled to a reasonable fee for preparing the report, to be fixed by the court and paid from the general fund of the county in which the court is sitting. If the patient wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with a reasonable opportunity to examine the patient.

(c) The report of the patient's mental and physical condition shall include, but is not limited to:

(1) the name of each physician and any other expert who examined the patient; and

(2) a description of the nature, content, and extent of the examination and any tests conducted; and

(3) a summary of the patient's history while hospitalized in the institution, including a resume of treatment administered; and

(4) a diagnosis and prognosis of the patient's mental and physical condition; and

(5) an opinion on whether the patient suffers from a mental disease or defect and, if so, whether he is a danger to himself or others; and

(6) an opinion on whether the patient requires continued hospitalization.

(d) Each report of the patient's mental and physical condition prepared under this section shall be delivered to the clerk of the court, who shall file it with the papers of the case and furnish a copy each to the prosecuting attorney and to counsel for the patient.

(e) On receipt of all reports required under Paragraph (b), the court shall conduct a hearing on the hospitalization issue. At the hearing the patient is required to prove his entitlement to discharge by a preponderance of the evidence,

and all parties are entitled to present evidence, summon and cross-examine witnesses, and make opening and closing statements. If the patient is not represented by counsel, the court shall appoint counsel, if authorized by Article 26.04, and allow adequate time for consultation and preparation. Counsel appointed under this section is entitled to compensation at the rate fixed by Article 26.05 for representing a felon or misdemeanant before a court of record.

(f) If the trier of facts determines after the hearing that the patient no longer requires hospitalization (because he no longer suffers from a mental disease or defect or is no longer a danger to himself or others), the court shall order his discharge when the judgment becomes final. If the trier of facts determines that the patient requires further hospitalization, the court shall recommit the patient when the judgment becomes final.

PART C. PSYCHIATRIC EXAMINATION OF DEFENDANT

Sec. 3.01. Appointment of psychiatrist

(a) If a defendant has entered a plea of "not guilty by reason of insanity," or a defendant, his counsel, or the prosecuting attorney has filed a motion asserting that there is reason to doubt the defendant's mental competency to proceed, or if the court after a hearing has reason to believe that mental disease or defect will otherwise become an issue in the trial, the court may appoint at least one psychiatrist to examine and report on the mental and physical condition of the defendant.

(b) A psychiatrist appointed by the court is entitled to a reasonable fee for conducting the examination, to be fixed by the court and paid from the general fund of the county in which the court is sitting.

(c) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with a reasonable opportunity to examine the defendant.

(d) The defendant shall cooperate fully with the psychiatrist appointed by the court. The defendant has no privilege against self-incrimination during the course of the examination into his mental and physical condition ordered under this section.

Sec. 3.02. Commitment for psychiatric examination

(a) The court may commit a defendant to a state mental hospital or other facility for an initial period not exceeding 30 days to obtain an examination and report of his mental and physical condition.

(b) The court may extend the initial commitment period for an additional period not exceeding 60 days after:

(1) providing the defendant and his counsel with notice and a hearing; and

(2) determining that there is good cause justifying the extension.

(c) The state is required to prove good cause justifying the extension under Paragraph (b) by a preponderance of the evidence.

Sec. 3.03. Report of examination

(a) The report of examination ordered under Section 3.01 shall include, but is not limited to:

(1) the name of each physician and any other expert who examined the defendant; and

(2) a description of the nature, content, and extent of the examination and any tests conducted; and

(3) a diagnosis and prognosis of the defendant's physical and mental condition; and

(4) an opinion on whether the defendant suffers from a mental disease or defect, and if so:

(A) a description of the treatment recommended, if any; and

(B) an opinion of the defendant's mental competency to understand the nature of the proceedings against him and to assist and participate in the proceedings against him; and

(C) an opinion on whether the defendant presently is a danger to himself or others and thus requires hospitalization; and

(D) an opinion as to the extent, if any, to which there was at the time of the alleged criminal conduct impairment of the capacity of the defendant either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law he allegedly violated.

(b) The report of examination shall be delivered to the clerk of the court, who shall file it with the papers of the case and furnish a copy each to the prosecuting attorney and to counsel for the defendant.

Sec. 3.04. Evidence obtained during examination

(a) A communication derived from the defendant's mental processes is not admissible against the defendant on the issue of guilt if the communication's truth or falsity is relevant to an element of any offense or to the defendant's credibility.

(b) Paragraph (a) applies to a communication obtained during the course of psychiatric examination, hospitalization, or treatment, whether the examination, hospitalization, or

treatment is ordered under this Article, secured by the state, or secured by the defendant.

PART D. RELEASE FROM HOSPITALIZATION BY HOSPITAL AUTHORITY

Sec. 4.01. Release by hospital authority

(a) When the head of the institution to which a patient has been committed under this Article determines that the patient no longer requires hospitalization (because he no longer suffers from a mental disease or defect or is no longer a danger to himself or others), the head of the institution shall report this determination to the court that committed the patient in the form and manner provided in Section 1.07(c) or 2.05(c), depending on whether the patient was committed following a determination of incompetency or a finding of not guilty by reason of insanity. The clerk of the court shall file the report with the papers of the case and furnish a copy each to the prosecuting attorney and counsel for the patient.

(b) After delivering his report, the head of the institution shall discharge the patient on the 30th day after the date of the report unless before that day the court or prosecuting attorney objects to discharge.

(c) If either the court or prosecuting attorney timely objects to discharge, the court shall conduct a hearing to determine whether the patient should be discharged. At the hearing the state is required to prove mental disease or defect and dangerousness by a preponderance of the evidence. The right to counsel and hearing requirements set out in Sections 1.07(e) and 2.05(e) apply to a hearing conducted under this paragraph.

(d) If the trier of facts determines after the hearing that the patient no longer requires hospitalization (because he no longer suffers from a mental disease or defect or is no longer a danger to himself or others), the court when the judgment becomes final:

(1) shall proceed under Section 1.06 if the patient was committed under Section 1.04 following a determination of incompetency; or

(2) shall discharge the patient if he was committed under Section 2.04 following a finding of not guilty by reason of insanity.

Section 5. CONFORMING AMENDMENTS: SENTENCING. The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

Art. 21.03. WHAT SHOULD BE STATED

Everything should be stated in an indictment which is

necessary to be proved. However, prior convictions shall not be stated in an indictment unless necessary to establish jurisdiction.

Art. 42.02. SENTENCING PROCEEDINGS

Sec. 1. Sentencing by court

(a) Except when the jury recommends probation, and in capital cases in which the state seeks the death penalty, the court shall determine the sentence of every defendant adjudged guilty of a felony or misdemeanor or resentenced following the reversal or setting aside of his judgment of guilt or sentence.

(b) Except for good cause stated in the record, the judge who adjudges a defendant guilty shall conduct the sentencing hearing and determine the defendant's sentence. When for good cause a different judge is to determine sentence, that judge shall ascertain the facts and circumstances of defendant's offense and plea.

(c) A sentencing hearing is required in every criminal action tried before a court of record.

Sec. 2. Sentencing Hearing

(a) If a new trial is not granted nor judgment arrested, the court shall set the sentencing hearing for a date subsequent to expiration of the time allowed for filing the motion for a new trial or to arrest judgment.

(b) At the sentencing hearing the prosecuting attorney, defendant, and counsel for the defendant are entitled to be present, offer evidence, subpoena, confront, and cross-examine witnesses, and argue. Except for the presentence and diagnostic reports, only legally competent evidence is admissible at the sentencing hearing. The court shall afford the prosecuting attorney and defendant a reasonable opportunity to controvert information contained in the presentence and diagnostic reports.

(c) A court reporter shall record the sentencing hearing.

Sec. 3. Duties of court at sentencing hearing

(a) The court shall state for the record:

(1) findings of fact and conclusions of law on every controverted issue developed during the sentencing hearing; and

(2) its reasons for imposing the sentence selected.

(b) If the defendant pled guilty or nolo contendere, the court shall ascertain the nature of any plea discussions and agreements and the extent to which they involved recommendation as to an appropriate sentence.

(c) The court in sentencing the defendant shall state the reasons for the sentence selected in the defendant's presence if the defendant is required to be present.

(d) After sentencing the defendant the court shall notify him of his right to appeal the sentence.

(e) Except in those cases described in Article 42.04, the court shall pronounce sentence after affording the defendant an opportunity under Article 42.07 to say why sentence should not be pronounced.

Sec. 4. Presentence report

(a) A court shall order a presentence investigation made of every defendant adjudged guilty of a felony, unless the court determines not to sentence the defendant to the custody of the Department of Corrections. The court may order a presentence investigation made of a defendant adjudged guilty of a misdemeanor, or in other appropriate circumstances, if the court believes the investigation will aid in determining sentence.

(b) Unless a defendant consents in writing, the presentence investigation may not begin until the defendant is adjudged guilty.

(c) A probation officer shall conduct each presentence investigation and report the results in writing to the court.

(d) The presentence report shall include, but is not limited to:

(1) a description of the circumstances of each offense of which defendant was adjudged guilty; and

(2) the defendant's criminal record; and

(3) the defendant's family and social history; and

(4) the diagnostic report described in Section 5, if feasible to secure the report; and

(5) a reasoned opinion of the defendant's rehabilitative potential; and

(6) any other information requested by the court.

(e) The prosecuting attorney and counsel for the defendant are entitled to examine the presentence report before the sentencing hearing begins. However, the court may prohibit examination of any portion of the report if there is compelling reason to do so. When the court so prohibits, it shall state for the record its reason for doing so.

(f) The presentence report is not a public record, but the court may permit those with a legitimate need to examine the report or portions of it. If the defendant is sentenced to imprisonment, the clerk of the sentencing court shall forward the presentence report to the penal institution after the sentence becomes final and unappealable.

Sec. 5. Diagnostic report

(a) A court may order a diagnostic examination under

this section if the court believes the examination will aid in determining sentence.

(b) A doctor appointed by the court to conduct a diagnostic examination is entitled to a reasonable fee for conducting the examination, to be fixed by the court and paid from the general fund of the county in which the court is sitting.

(c) The court may commit the defendant to a state mental hospital or other facility under Article 46.02, Section 3.02, to obtain the diagnostic examination.

(d) The diagnostic report shall include, but is not limited to:

(1) the name of each physician and any other expert who examined the defendant; and

(2) a description of the nature, content, and extent of the examination and any tests conducted; and

(3) a diagnosis and prognosis of the defendant's physical and mental condition; and

(4) a description of recommended treatment, if any, and an opinion on the availability of the treatment; and

(5) a reasoned opinion of whether the defendant is reasonably likely to inflict or attempt to inflict death or serious bodily injury on another in the foreseeable future; and

(6) any other information requested by the court.

(e) The prosecuting attorney and counsel for the defendant are entitled to examine the diagnostic report before the sentencing hearing begins. However, the court may prohibit examination of any portion of the report if there is compelling reason to do so. When the court so prohibits, it shall state for the record its reason for doing so.

(f) The diagnostic report is not a public record, but the court may permit those with a legitimate need to examine the report or portions of it. If the defendant is sentenced to imprisonment, the clerk of the sentencing court shall forward the diagnostic report to the penal institution after the sentence becomes final and unappealable.

Sec. 6. Additional requirements for exceptional sentence

(a) In addition to the requirements of Sections 1-5, the requirements of this section apply if a prosecuting attorney or defendant seeks imposition of an exceptional sentence (other than the death penalty) authorized by Penal Code Chapter 12, Subchapter D.

(b) If the prosecuting attorney or defendant intends to seek imposition of an exceptional sentence, he shall file with the court a written motion of his intent and serve a copy of the motion on the opposing party. The motion must be filed and

the copy served at least 10 days before the trial begins, or if the court sets a pretrial hearing, the motion must be filed and served at the hearing.

(c) The motion may be amended in writing before the sentencing hearing begins. The amending party shall file the amendment with the court and serve a copy of the amendment on the opposing party. The amendment must be filed and the copy served in time to provide both the court and the opposing party with fair notice of the nature of the amendment.

(d) The motion shall contain detailed legal and factual allegations and copies of any documents necessary to support the imposition of an exceptional sentence.

(e) The party seeking imposition of an exceptional sentence has the burden of producing evidence and proving to the court by a preponderance of the evidence that imposition of the exceptional sentence is appropriate under the standards set out in the Penal Code.

(f) The existence and content of the motion and any amendment may not be disclosed to the jury.

Sec. 7. Procedure for determining death penalty

(a) If a defendant is adjudged guilty of a capital felony for which the state sought the death penalty, the court shall conduct the sentencing hearing in the presence of the jury that found the defendant guilty. However, only legally competent evidence is admissible at the sentencing hearing before the jury on the death penalty issue.

(b) The prosecuting attorney has the burden of producing evidence and persuading the jury beyond a reasonable doubt that imposition of the death penalty is appropriate.

(c) The court shall charge the jury:

(1) on the prosecution's burden of proof set out in Paragraph (b); and

(2) that it may recommend that the defendant live or die; and

(3) that if it recommends that the defendant live, the court shall sentence him:

(A) to life imprisonment; or

(B) to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 12 years and the maximum at not more than life imprisonment; or

(C) to a term of imprisonment the minimum of which the court shall fix at not less than 1 year nor more than 10 years and the maximum at not more than 30 years; and

(4) on any other matter appropriate under the circumstances of the particular case.

(d) If the jury unanimously recommends death, the court may sentence the defendant to death or life imprisonment. If the jury unanimously recommends that the defendant live, the court shall sentence him as if he were adjudged guilty of a felony of the first degree.

(e) After the jury has made its recommendation, the court shall order preparation of the presentence and diagnostic reports described in Sections 4 and 5, and shall consider both reports before sentencing the defendant.

(f) The prosecuting attorney and counsel for the defendant are entitled to examine the presentence and diagnostic reports before the court sentences the defendant. However, the court may prohibit examination of any portion of the report if there is compelling reason to do so. When the court so prohibits, it shall state for the record its reason for doing so. The court shall afford the prosecuting attorney and defendant a reasonable opportunity to controvert information contained in the presentence and diagnostic reports.

(g) If the jury cannot unanimously agree on a recommendation, the court shall discharge the jury and declare a mistrial of the entire criminal action.

Art. 42.03. CREDIT ON SENTENCE

(a) A defendant sentenced for a felony or misdemeanor to any term of imprisonment is entitled to credit against both the maximum term and any minimum term imposed for all time spent in custody following arrest and during trial.

(b) A defendant who appeals his judgment of guilt or sentence or both is entitled to credit against both the maximum term and any mimimum term imposed for all time spent in custody pending disposition of his appeal. The clerk of the sentencing court shall endorse on both the mandate and commitment all credit against the sentence to which a defendant is entitled under this paragraph.

(c) A defendant resentenced following the reversal or setting aside of his judgment of guilt or sentence for a felony or misdemeanor, whether he is resentenced following a judgment of guilt for the same offense or a different offense arising out of the same criminal episode, is entitled:

(1) to credit, including all time earned for good behavior, against the new sentence of imprisonment for all time spent in custody under the prior sentence of imprisonment; and

(2) to credit against the new sentence of a fine for any amount paid or earned by imprisonment on the prior sentence of a fine.

(d) The Department of Corrections and each sheriff in charge of a county jail shall grant all credit to which a defendant is entitled under this Article in computing the defendant's eligibility for parole and discharge.

Art. 42.08. INCREASING SEVERITY OF SENTENCE PROHIBITED

After a judgment of guilt or sentence is reversed or set aside, the sentencing court may not increase the severity of the original sentence, whether the defendant is reconvicted or resentenced for the same offense or for a different offense arising out of the same criminal episode.

Art. 42.09. COMMENCEMENT OF SENTENCE AND DELIVERY TO JAIL OR DEPARTMENT OF CORRECTIONS

(a) Except as provided in Paragraphs (b) and (c), a defendant shall be delivered to jail or the Department of Corrections when his sentence to imprisonment is pronounced, or his sentence to death announced, by the court. The defendant's sentence begins to run when he is delivered to jail or the Department of Corrections.

(b) If a defendant appeals his judgment of guilt or sentence or both and is released on bail pending disposition of his appeal, when his judgment of guilt or sentence or both are affirmed, the clerk of the trial court, on receipt of the mandate from the court of Criminal Appeals, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment.

(c) If a defendant sentenced to death or the Department of Corrections appeals his judgment of guilt or sentence or both, the trial court or the Court of Criminal Appeals may order the defendant retained in a local jail, rather than delivered to the Department of Corrections, if the defendant requests retention by written motion and the court finds that special circumstances justify the retention pending disposition of the appeal. If the judgment and sentence are affirmed, the defendant shall be delivered to the Department of Corrections on receipt of the mandate from the Court of Criminal Appeals, and the defendant's sentence begins to run when he is delivered to the department.

Art. 42.12. ADULT PROBATION AND PAROLE LAW

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Sec. 3. (a) Following conviction or plea of guilty or nolo contendere for an offense, a court may suspend the imposition of all or part of the sentence and grant probation if the court finds, after considering the factors enumerated in Paragraph (b)

of this section and in Penal Code Section 12.06, that probation would best serve the interest of society and the defendant.

(b) In determining whether to grant probation, the court shall consider the following factors among others:

(1) whether the defendant's criminal conduct caused or threatened serious harm to another's person or property;

(2) whether the defendant planned or expected that his criminal conduct would cause or threaten serious harm to another's person or property;

(3) whether the defendant acted under strong provocation;

(4) whether there were substantial grounds tending to excuse the defendant's conduct, though insufficient to establish a legal defense;

(5) whether the victim induced or facilitated the defendant's criminal conduct;

(6) whether the defendant has made or will make restitution or reparation to the victim for the damage or injury sustained;

(7) whether the defendant has a history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before commission of the present offense;

(8) whether the defendant's criminal conduct was the result of circumstances unlikely to recur;

(9) whether the character, history, and attitude of the defendant indicate that he is likely to commit another offense;

(10) whether the defendant is particularly likely to respond affirmatively to probationary treatment;

(11) whether imprisonment of the defendant would entail disproportionate hardship to himself or his dependents.

Sec. 3a. (a) A defendant may request the jury to recommend probation if he has never before been adjudged guilty of a felony, or granted probation following a judgment of guilt of a felony, in this or any other jurisdiction.

(b) A defendant requests jury probation by filing a written motion with the court and serving a copy on the prosecuting attorney. The defendant must state in the motion that he is eligible for jury probation under Paragraph (a), and he must swear to the truth of his statement. The motion must be filed, and the copy served, before the trial on the merits begins, or if the court sets a pretrial hearing, the motion must be filed and served at the hearing.

(c) If the defendant is found guilty by the jury, the

court shall conduct the sentencing hearing under Article 42.02, Section 2, before the jury that found defendant guilty. However, only legally competent evidence is admissible at the sentencing hearing before the jury on the probation issue.

(d) At the conclusion of the sentencing hearing the jury shall retire and determine whether to recommend probation. If the jury recommends probation, the court shall grant defendant probation for a period and on conditions the court determines under Sections 3b and 4. If the jury recommends against probation, the court may nevertheless grant probation, or it may sentence the defendant to any punishment authorized by law.

Sec. 3b. (a) A period of probation may not exceed:

(1) fifteen years from the date it was granted if the probationer was convicted of a capital felony or felony of the first degree;

(2) twelve years from the date it was granted if the probationer was convicted of a felony of the second degree;

(3) six years from the date it was granted if the probationer was convicted of a felony of the third degree;

(4) two years from the date it was granted if the probationer was convicted of a Class A misdemeanor;

(5) one year from the date it was granted if the probationer was convicted of a Class B misdemeanor.

(b) The court may terminate probation, and discharge the defendant under Section 7 before the period of probation expires, if warranted by the probationer's conduct and progress toward rehabilitation.

Sec. 4. (a) The court granting probation shall determine the period and conditions of probation and supervise the probationer. The court shall design the period and conditions to prevent recidivism and promote rehabilitation of the probationer.

(b) The conditions of probation must be reasonable and shall include, but are not limited to, the requirements that the probationer:

(1) commit no offense against the law of this or any other state or of the United States; and

(2) report to the probation officer as directed; and

(3) permit the probation officer to visit him at his home or elsewhere at reasonable hours; and

(4) work faithfully at suitable employment insofar as possible; and

(5) support his dependents; and

(6) remain within a specified geographical area; and

(7) pay in one or several sums any fine, all court costs, and all reparation determined by the court; and

(8) make any restitution determined by the court;

(c) The court may also require, as a condition of probation, the defendant to serve during nonworking hours any imprisonment assessed.

(d) The clerk of the court granting probation shall promptly furnish the probationer with a written statement of the period and conditions of his probation. If the period or conditions are later modified under Paragraph (d), the clerk of the modifying court shall promptly furnish the probationer with a written statement of the modifications. The probationer shall acknowledge in writing receipt of each statement furnished under this paragraph.

(e) After giving the probationer notice and an opportunity to be heard, the court with jurisdiction over the probationer may modify the period or conditions of probation if warranted by the probationer's conduct.

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Sec. 7. (a) When a probationer satisfies the period and conditions of his probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary to conform to the probation period, and shall discharge the defendant.

(b) After discharging the defendant hereunder, the court may set aside the verdict, or permit the defendant to withdraw his plea, and dismiss the complaint and information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty or nolo contendere, except that proof of his said conviction or plea of guilty or nolo contendere shall be made known to the court should the defendant again be convicted of any criminal offense.

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. A peace officer may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. Thereupon, the court shall cause the defendant to be brought before it and after a hearing without a jury, may either continue or

revoke the probation and, if probation is revoked, shall proceed to dispose of the case as if there had been no probation.

(b) If a probationer is not represented by counsel at the revocation hearing, the court shall appoint counsel, if authorized by Article 26.04, and allow appointed counsel adequate time for consultation with the probationer and preparation of a defense. Counsel appointed under this section is entitled to compensation at the rate fixed by Article 26.05 for representing a felon or misdemeanant before a court of record.

(c) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law.

(d) No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve.

(e) The right of the probationer to appeal to the Court of Criminal Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

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Sec. 15. (a) The Board is authorized to release on parole, with the approval of the Governor, any person confined in a penal or correctional institution of this state who has served his minimum term of imprisonment or twenty years, whichever is the lesser. Time served on both the minimum and maximum terms of imprisonment shall be the total calendar time served and all credits allowed under the laws governing the operation of the Department of Corrections and executive clemency. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

(b) The Board, in cooperation with the Department of Corrections, shall formulate, publish, and distribute to all prisoners and the interested public criteria reflecting the principles set out in this section and in Penal Code Section 12.06, together with an explanation of the factors considered by the Board in making the parole decision.

(c) The Board shall consider each prisoner entitled to parole at the time of his first eligibility determined under

Paragraph (a). However, the Board may recommend against parole at that time when reasons to do so appear in the prisoner's record. The Board shall state its reasons in writing for recommending for or against parole and furnish the prisoner with a copy of its reasons.

(d) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made.

(e) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(f) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof in clear and intelligible language.

(g) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the district attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

(h) If no parole officer has been assigned to the locality where a person is to be released on parole or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality.

Art. 4.03. COURT OF CRIMINAL APPEALS

(a) The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases. However, this jurisdiction shall not be construed to embrace any case which has been appealed from an inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court, or the county court at law shall not exceed one hundred dollars.

(b) The appellate jurisdiction of the Court of Criminal Appeals shall include the power to review sentences as to their legality and appropriateness, the procedure by which they were imposed, and the sufficiency and accuracy of the evidence on which they were based. The court's power extends to sentences and resentences imposed after trial on the merits, after reversal and remand of a sentence, or after entry of a guilty plea or a plea of nolo contendere.

(c) The court's power to review sentences and resentences does not constitute a reprieve, commutation, parole, or pardon, nor may it interfere with the clemency power reserved to the executive branch by Texas Constitution Article IV, Section 11.

Art. 40.09. THE RECORD ON APPEAL

1. Record in appeals to the Court of Criminal Appeals

In all cases appealable by law to the Court of Criminal Appeals, the clerk of the court that entered the conviction sought to be appealed from shall, under his hand and seal of the court, make and prepare an appellate record comprising a true copy of the matter designated by the parties, but shall always include, whether designated or not, copies of the material pleadings, material docket entries made by the court, the charge, verdict, judgment, sentence, notice of appeal, any appeal bond, all written motions and pleas and orders of the court, and bills of exception. For all appeals concerning the legality or appropriateness of the sentence, the clerk shall include, whether designated or not, the presentence and diagnostic reports, if any, and the transcription of the sentencing hearing. The matter so prepared shall be assembled under one cover and shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the record. The record shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.

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4. Effect of transcription of reporter's notes

At the request of either party, or if required by law,

the court reporter shall take shorthand notes of all trial proceedings, including voir dire examination, objections to the court's charge, final arguments, and the sentencing hearing. He is not entitled to any fee in addition to this salary for taking these notes. A transcription of the reporter's notes when certified to by him and included in the record shall establish the occurrence and existence of all testimony, argument, motions, pleas, objections, exceptions, court actions, refusals of the court to act and other events thereby shown and no further proof of the occurrence or existence of same shall be necessary on appeal; provided, however, that the court shall have power, after hearing, to enter and make part of the record any finding or adjudication which the court may deem essential to make any such transcription speak the truth and any such finding or adjudication having support in the evidence shall be final.

5. Responsibility for obtaining transcription of reporter's notes

Except as provided in Section 1, a party desiring to have included in the record a transcription of notes of the reporter shall have the responsibility of obtaining such transcription and furnishing same to the clerk in duplicate in time for inclusion in the record and defendant shall pay therefor. The court shall order the reporter to make such transcription without charge to defendant if the court finds, after hearing in response to affidavit by defendant that he is unable to pay or give security therefor. Upon certificate of the court that this service has been rendered, payment therefor shall be made from the general funds by the county in which the offense is alleged to have been committed. The court reporter shall report any portion of the proceedings if required by law, requested by either pary, or directed by the court.

Art. 44.04. BAIL PENDING DISPOSITION OF APPEAL.

(a) After sentence is pronounced, a defendant who appeals his judgment of guilt or sentence or both is entitled to bail pending disposition of his appeal unless:

(1) he is sentenced to imprisonment for a maximum term of twelve or more years; or

(2) he appeals only his sentence, seeking only a reduction in it.

(b) If a defendant appeals only his sentence, seeking only a reduction in it, either the trial court or Court of Criminal Appeals may fix bail if the defendant requests it by written motion and the court finds that special circumstances justify releasing defendant on bail pending disposition of his sentencing appeal.

(c) If a defendant is on bail when the trial commences and is convicted of a misdemeanor appealable to any court where a trial de novo may be had and is on bail when the trial commences, he shall remain on such bail and such bail shall not be considered as discharged until his conviction becomes final or he files an appeal bond as required by this Code for appeal from such conviction.

(d) If a defendant is on bail when the trial commences, and following pronouncement of sentence he is entitled to bail under Paragraph (a), he shall remain on bail, which bail is not discharged until his conviction becomes final and unappealable. However, the trial court may increase or decrease the amount of bail on its own motion or the motion of the State or defendant.

(e) If a defendant is in custody when the trial commences, and following pronouncement of sentence he is entitled to bail under Paragraph (a), he may apply for bail at any time prior to the time such conviction becomes final, and the trial court shall set his bail at such amount as such court deems proper, which bail and sureties on which bond shall be approved by the trial court. Such defendant shall be committed to jail unless he enters into such bail. If he be in custody, his motion for new trial or notice of appeal shall have no effect to release him from such custody unless he enters into such bail.

(f) Bail under this Article may be entered into and given either in the same or any subsequent term of the court, and shall be sufficient if it substantially meets the requirements of Article 17.09.

(g) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(h) If a defendant is sentenced to imprisonment for a maximum term of twelve or more years, or if he appeals only his sentence, seeking only a reduction in it, his bail is discharged when the court pronounces sentence, or the defendant gives notice of appeal, and the sheriff shall immediately take him into custody.

Art. 44.04a. REVOCATION OF BAIL PENDING DISPOSITION OF APPEAL

(a) The sentencing court may revoke the bail of a defendant released pending disposition of his appeal if the court after a hearing determines that there is probable cause to believe the defendant committed a felony while on bail.

(b) When notified of the probable commission of a felony, the sentencing court may cause the defendant's arrest by warrant

as in other cases and conduct a hearing without a jury on the issue. At the hearing the state, defendant, and his counsel are entitled to be present, offer evidence, subpoena, confront and cross-examine witnesses, and argue. If defendant is not represented by counsel at the bail revocation hearing, the court shall appoint counsel, if authorized by Article 26.04, and allow appointed counsel adequate time for consultation and preparation. Counsel appointed under this paragraph is entitled to compensation at the rate fixed by Article 26.05 for representing a felon or misdemeanant before a court of record.

(c) If the sentencing court after the hearing determines there is probable cause to believe defendant committed a felony while on bail, the court shall revoke the bail, cancel any bond entered into, and order the defendant delivered to jail or the Department of Corrections to serve his sentence, which sentence begins to run on the date of the order.

Art. 44.25. DISPOSITION OF APPEALS.

(a) In reviewing a judgment of guilt and sentence, the Court of Criminal Appeals, as the law and nature of the criminal action require, may:

(1) affirm the judgment or sentence or both;

(2) reverse and remand the judgment for a new trial;

(3) reverse and remand the sentence for a new sentencing hearing;

(4) reform and correct the judgment or sentence or both;

(5) substitute for the sentence under review any other legal and appropriate sentence, whether more or less severe than the sentence under review;

(6) reverse and dismiss the criminal action.

(b) The Court of Criminal Appeals may reverse the judgment or sentence or both as well upon the law as upon the facts. A criminal action reversed because the judgment of guilt is contrary to the evidence shall be remanded for a new trial.

(c) If the Court of Criminal Appeals reverses a death sentence, it shall remand the criminal action for a new trial.

(d) In reviewing the legality and appropriateness of a sentence, the Court of Criminal Appeals shall consider the procedure by which the sentence was imposed, the sufficiency and accuracy of the evidence on which it was based, and the general principles of sentencing set out in Penal Code Section 12.06.

Section 6. CONFORMING AMENDMENTS: STOP AND FRISK. Chapter 14 of the Code of Criminal Procedure, 1965, is amended to read as follows:

CHAPTER FOURTEEN. STOP, HALT, AND ARREST WITHOUT WARRANT

Article
14.01 Stopping Persons for Investigation
14.02 Halt and Search at Roadblock
14.03 Arrest by Peace Officer
14.04 Arrest by Citizen
14.05 Rights of Officer or Person Making Arrest
14.06 Prompt Appearance Before Magistrate or Issuance of Citation
14.07 Preemption

Art. 14.01. STOPPING PERSONS FOR INVESTIGATION

Sec. 1. Definition of stop

(a) A stop is the temporary detention of a person that results when a peace officer orders the person to remain in his presence to enable the peace officer to accomplish the purposes authorized in this Article.

(b) The stop may:

(1) be ordered only by a peace officer who is lawfully present in any place; and

(2) be maintained only for a period of time that is reasonably necessary to accomplish the authorized purposes of the stop, but in no case for more than 30 minutes; and

(3) be maintained only in the area near the original place of the stop.

Sec. 2. Cases in which stop authorized

(a) A peace officer may stop any person he observes in circumstances that give the peace officer reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against the person or the theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct, or to determine whether to arrest the person.

(b) A peace officer may stop any person he finds near the scene of an offense that the peace officer has reasonable cause to suspect has just been committed if:

(1) the peace officer has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; and

(2) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(c) A peace officer may stop any person in connection with an offense that the peace officer has probable cause to believe has been committed if:

(1) the offense is a felony involving the use or attempted use of force against the person or the theft, damage, or destruction of property; and:

(A) the peace officer has reasonable cause to suspect the person committed the felony; and

(B) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(2) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

Sec. 3. Frisk for weapon

(a) A frisk is a search by an external patting of a person's clothing.

(b) A peace officer who has lawfully stopped a person under Section 2 may:

(1) frisk that person, and take other reasonably necessary steps for protection, if the peace officer has reasonable cause to suspect that the person is armed and presently dangerous to the peace officer or another person present; and

(2) take possession of any object the peace officer feels during the course of the frisk if the peace officer has probable cause to believe the object is a deadly weapon.

(c) Nothing seized by a peace officer in a frisk conducted under this section is admissible in any criminal action, civil suit, or administrative proceeding unless the stop, frisk, and seizure were authorized under this article.

Sec. 4. Identification of person stopped

A peace officer who has lawfully stopped a person under Section 2 may:

(1) demand of the person his name and his present or last address; and

(2) allow the person to be viewed by others at or near the scene of the stop if the person was stopped under Section 2(a).

Sec. 5. Questioning person stopped

(a) A peace officer who has stopped a person under Section 2 shall inform the person, as promptly as possible under the circumstances and in any case before engaging in questioning:

(1) that he is a peace officer; and

(2) that the stop is not an arrest but rather a temporary detention for investigation, and that upon completion of the investigation the person will be released unless he is arrested; and

(3) if the person was stopped under Section 2(b) or (c)(2), that the person is detained only as a witness who is required by law to identify himself to the peace officer; and

(4) that the person has a right to remain silent, that anything he says may be used against him, and that he has a right to terminate the questioning at any time.

(b) If the person is arrested during the course of the stop, the peace officer shall warn him under Article 15.17.

Sec. 6. Action taken after stop

After the authorized purposes of the stop have been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

Art. 14.02. HALT AND SEARCH AT ROADBLOCK

Sec. 1. Circumstances in which roadblock authorized

A peace officer may order the driver of a vehicle to halt at a roadblock if:

(1) the peace officer has probable cause to believe that a capital felony or felony of the first degree involving the use or attempted use of force against the person or the theft, damage, or destruction of property has been committed; and

(2) halting all or most vehicles moving in a particular direction is reasonably necessary to permit a search for a party to or victim of the felony.

Sec. 2. Action taken after halt

(a) A peace officer who has lawfully halted a vehicle under Section 1 may:

(1) search the vehicle as promptly as possible under the circumstances and to the extent reasonably necessary to locate the party or victim; and

(2) frisk each occupant as authorized by Section 3(a), (b)(1), and (b)(2) of Article 14.01.

(b) Nothing seized by a peace officer in a search or frisk conducted under this section is admissible in a criminal action, civil suit, or administrative proceeding unless the halt, frisk, search, and seizure were authorized by this article.

(c) After the authorized purpose of the halt has been accomplished or 20 minutes have elapsed, whichever occurs first, the peace officer shall inform the person that he is free to go unless the peace officer has arrested the person.

Art. 14.03. ARREST BY PEACE OFFICER

A peace officer may arrest a person without a warrant if the peace officer has probable cause to believe that the person:

Art. 14.03. ARREST BY PEACE OFFICER

A peace officer may arrest a person without a warrant if the peace officer has probable cause to believe that the person:

(1) committed a felony; or

(2) committed a misdemeanor, and the peace officer has probable cause to believe that the person:

(A) committed the misdemeanor in the peace officer's presence or view; or

(B) will not be apprehended unless immediately arrested; or

(C) will cause bodily injury to himself or another or damage to property unless immediately arrested.

Art. 14.04. ARREST BY CITIZEN

Any person may arrest an offender without a warrant if the offender committed a felony or an offense against the public peace in the presence or view of the person making the arrest.

Art. 14.05. RIGHTS OF OFFICER OR PERSON MAKING ARREST

In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures he might adopt in cases of arrest under warrant.

Art. 14.06. PROMPT APPEARANCE BEFORE MAGISTRATE OR ISSUANCE OF CITATION

(a) In each case enumerated in this Code, the person making the arrest shall take the person arrested or have him taken without unnecessary delay before the magistrate who may have ordered the arrest or before some magistrate of the county where the arrest was made without an order. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

(b) Instead of taking the person arrested before a magistrate, a peace officer may issue a citation to the person arrested to appear in court if the justice or corporation court has jurisdiction over the offense for which the person was arrested.

Art. 14.07. PREEMPTION

The legislature by enacting this chapter intends to preempt any other regulation of the area covered by this chapter. No governmental subdivision or agency may enact or enforce a law that regulates or makes any conduct in the area covered by this chapter an offense, a violation, or the subject of a criminal or civil penalty or sanction of any kind.

Section 7. CONFORMING AMENDMENTS: WEAPONS AND GAMBLING. The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

Art. 18.02. WHEN IT MAY ISSUE

A search warrant may be issued:

(1) to discover property acquired by theft or in any other manner which makes its acquisition a penal offense;

(2) to search suspected places where it is alleged property so illegally acquired is commonly kept or concealed;

(3) to search places where it is alleged criminal instruments, as that term is defined in Penal Code Section 16.01, are manufactured or kept;

(4) to search places where it is alleged slot machines, gambling devices or records, or gambling proceeds, as those terms are defined in Penal Code Chapter 47, are kept;

(5) to search places where it is alleged arms and munitions are kept or prepared for the purpose of insurrection or riot, or where it is alleged that weapons prohibited by Penal Code Section 46.03 are manufactured or kept;

(6) to seize and bring before a magistrate any such property, instruments, slot machines, gambling devices or records, gambling proceeds, arms and munitions, or weapons.

Art. 18.06. RULES APPLICABLE

The mode of proceeding, directed to be pursued in applying for a warrant to search for and seize stolen property, and the rules prescribed for officers in issuing such warrants and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for is:

(1) slot machines, gambling devices or records, or gambling proceeds, as those terms are defined in Penal Code Chapter 47;

(2) criminal instruments, as that term is defined in Penal Code Section 16.01;

(3) weapons prohibited by Penal Code Section 46.03;

(4) property that was acquired in any manner in violation of any provision of the Penal Code.

(b) The Code of Criminal Procedure, 1965, is amended by adding two new articles to read as follows:

Art. 18.31. DISPOSITION OF GAMBLING PARAPHERNALIA, PROHIBITED WEAPON, CRIMINAL INSTRUMENT

(a) Following the final conviction of a person for possession of a slot machine, or gambling device or record, for an offense involving a criminal instrument, or for an offense involving a prohibited weapon, the court entering the judgment of

conviction shall order that the machine, device, record, instrument, or weapon be destroyed or forfeited to the State. If forfeited, the court shall order the contraband delivered to the State, any political subdivision of the State, or to any State institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the State and shall transmit them to the grand jury of the county in which they were seized, for use in investigating alleged violations of the Penal Code, or to the State, any political subdivision of the State, or to any State institution or agency.

(b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged slot machine, gambling device or record, gambling proceeds, prohibited weapon, or criminal instrument to show cause why the property seized should not be destroyed or the proceeds forfeited.

(c) The magistrate shall include in the notice a detailed description of the property seized and the total amount of alleged gambling proceeds; the name of the person found in possession; the address where the property or proceeds were seized; and the date and time of the seizure.

(d) The magistrate shall send the notice by registered or certified mail, return receipt requested, to the person found in possession at the address where the property or proceeds were seized. If no one was found in possession, or the possessor's address is unknown, the magistrate shall post the notice on the courthouse door.

(e) Any person interested in the alleged slot machine, gambling device or record, gambling proceeds, prohibited weapon, or criminal instrument seized must appear before the magistrate on the twentieth day following the date the notice was mailed or posted. Failure to timely appear forfeits any interest the person may have in the property or proceeds seized, and no person after failing to timely appear may contest destruction or forfeiture.

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not a slot machine, gambling device or record, gambling proceeds, prohibited weapon, or criminal instrument, and that he is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Paragraph (a).

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in Penal Code Section 16.01;

(2) "gambling device or record" has the meaning defined in Penal Code Section 47.01;

(3) "gambling proceedings" has the meaning defined in Penal Code Section 47.01;

(4) "prohibited weapon" means a weapon identified in Penal Code Section 46.03;

(5) "slot machine" has the meaning defined in Penal Code Section 47.06.

Art. 18.32. DISPOSITION OF CERTAIN WEAPONS

(a) Weapons seized in connection with an offense involving the use of a deadly weapon or an offense under Penal Code Section 46.02 shall be held by the law enforcement agency making the seizure, subject to the following provisions, unless:

(1) the weapon is a prohibited weapon identified in Penal Code Section 46.03, in which event Article 18.31 (disposition of gambling paraphernalia, prohibited weapon, criminal instrument) applies; or

(2) the weapon is alleged to be stolen property, in which event Chapter 47 applies.

(b) When a person seizes a weapon described in Paragraph (a), and the seizure is not made pursuant to a search or arrest warrant, the person shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall notify in writing the person found in possession that he is entitled to the weapon upon request to the law enforcement agency holding the weapon. If the weapon is not requested within sixty days after notification, the magistrate may order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon.

(d) A person convicted under Penal Code Section 46.02(a)(1) (possession of firearm, knife, club) is entitled to the weapon seized upon request to the law enforcement agency holding the weapon. However, the court entering the judgment of conviction may order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon if:

(1) the person does not request the weapon within sixty days after his release from jail or the date of the judgment of conviction if he was not imprisoned; or

(2) the person has been convicted two or more times before under Penal Code Section 46.02(a)(1).

(e) If the person found in possession of a weapon is convicted of an offense involving the use of a deadly weapon or under Penal Code Section 46.02(a)(2) (possession of deadly weapon), the court entering judgment of conviction may order destruction of the weapon or forfeiture to the state for use by the law enforcement agency holding the weapon.

Section 8. CONFORMING AMENDMENTS: LIMITATIONS AND VENUE. Chapters 12 and 13 of the Code of Criminal Procedure, 1965, are amended to read as follows:

CHAPTER TWELVE

LIMITATION

Article

12.01 Felonies

12.02 Misdemeanors

12.03 Facilitation, attempt, conspiracy, solicitation

12.04 Computation

12.05 Absence from State and time of pendency of indictment, etc., not computed

12.06 An indictment is "presented," when

12.07 An information is "presented," when

Art. 12.01. FELONIES

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation: murder and manslaughter.

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using, or passing of forged instruments.

(3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson.

(4) one year from the date of the commission of the offense: any felony in Penal Code Chapter 21 (sexual offenses).

(5) three years from the date of the commission of the offense: all other felonies.

Art. 12.02. MISDEMEANORS

An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward.

Art. 12.03. FACILITATION, ATTEMPT, CONSPIRACY, SOLICITATION

(a) The limitation period for facilitation of a felony is the same as that of the felony facilitated.

(b) The limitation period for criminal attempt is the same as that of the offense attempted.

(c) The limitation period for criminal conspiracy is the same as that of the object offense of the conspiracy.

(d) The limitation period for criminal solicitation is the same as that of the felony solicited.

Art. 12.04. COMPUTATION

The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

Art. 12.05. ABSENCE FROM STATE AND TIME OF PENDENCY OF INDICTMENT, ETC., NOT COMPUTED

(a) The time during which the accused is absent from the State shall not be computed in the period of limitation.

(b) The time during the pendency of indictment, information, or complaint shall not be computed in the period of limitation.

(c) The term "during the pendency," as used herein, means that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction, and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason.

Art. 12.06. AN INDICTMENT IS "PRESENTED," WHEN

An indictment is considered as "presented" when it has been duly acted upon by the grand jury and received by the court.

Art. 12.07. AN INFORMATION IS "PRESENTED," WHEN

An information is considered as "presented" when it has been filed by the proper officer in the proper court.

CHAPTER THIRTEEN
VENUE

Article

13.01 Offenses committed outside this State

13.02 Forgery

13.03 Perjury

13.04 On the boundary of two counties

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Art. 13.01. OFFENSES COMMITTED OUTSIDE THIS STATE

Offenses committed wholly or in part without this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in any county in which the offender is found, or in any county in which an element of the offense occurs.

Art. 13.02. FORGERY

Forgery may be prosecuted in any county where the writing was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association, or corporation either for collection or credit for the account of any person, firm, association or corporation. All forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in Travis County, or in the county in which such land, or any part thereof, is situated.

Art. 13.03. PERJURY

Perjury and aggravated perjury may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

Art. 13.04. ON THE BOUNDARY OF TWO COUNTIES

An offense committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county.

Art. 13.05. CRIMINAL HOMICIDE COMMITTED OUTSIDE THIS STATE

The offense of criminal homicide committed wholly or in part without this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in the county where the injury was inflicted, or in the county where the offender was located when he inflicted the injury, or in the county where the victim died or the body was found.

Art. 13.06. COMMITTED ON A BOUNDARY STREAM

If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed.

Art. 13.07. INJURED IN ONE COUNTY AND DYING IN ANOTHER

If a person receives an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred, or in the county where the dead body is found.

Art. 13.08. COMMITTED ON A BOUNDARY

Where a river or other stream or highway is the boundary between two counties, any offense committed on such river, stream or highway at a place where it is such boundary, is punishable in either county.

Art. 13.09. THEFT

Where property is stolen in one county and carried off by the offender to another, the offender may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried it.

Art. 13.10. HINDERING SECURED CREDITORS

If secured property is taken from one county and unlawfully disposed of in another county or state, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in the county in which the security agreement is filed.

Art. 13.11. PERSON ACTING UNDER AUTHORITY OF THIS STATE

An offense committed without this State by a commissioner of deeds, or other officer acting under the authority of this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted in any county of this State.

Art. 13.12. ON VESSELS

An offense committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates.

Art. 13.13. FALSE IMPRISONMENT, KIDNAPPING

Venue for false imprisonment and kidnapping belongs either to the county in which the offense was committed, or to any county through, into or out of which the person falsely imprisoned or kidnapped may have been taken.

Art. 13.14. CONSPIRACY

Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, or in the county where the conspiracy was agreed to be executed. If a conspiracy was entered into without this State under circumstances that give this State jurisdiction to prosecute the offender, the offender may be prosecuted in the county where the conspiracy was agreed to be executed, or in the county where any one of the conspirators was found, or in Travis County.

Art. 13.15. BIGAMY

Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife.

Art. 13.16. RAPE

Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and if the court be in session, but the grand jury has been discharged, he shall immediately recall said grand jury to investigate the accusation. Prosecution for rape shall take precedence in all cases in all courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

Art. 13.17. CRIMINAL NONSUPPORT

Criminal nonsupport may be prosecuted in the county where the complaining spouse or child is residing at the time the information or indictment is presented.

Art. 13.18. PROOF OF VENUE

In all cases mentioned in this Chapter, the indictment or information, or any proceeding in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove that by reason of the facts in the case, the county where such prosecution is carried on has venue.

Art. 13.19. OTHER OFFENSES

If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

Section 9. CONFORMING AMENDMENTS: MISCELLANEOUS. (a) The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

Art. 37.08. CONVICTION OF LESSER INCLUDED OFFENSE

(a) In a prosecution for an offense with lesser included offenses, the jury may find the defendant not guilty of the greater offense, but guilty of any lesser included offense.

(b) A person charged as a party to the commission of a felony may be convicted of facilitation of the felony.

Art. 37.09. LESSER INCLUDED OFFENSE

An offense is a lesser included offense if:

(1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission; or

(3) it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission; or

(4) it consists of an attempt to commit the offense charged or an otherwise included offense.

Art. 2.12. WHO ARE PEACE OFFICERS

A peace officer is an officer, employee, or agent of government who has a duty imposed by statute:

(1) to maintain public order; or

(2) to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; or

(3) to investigate the commission or suspected commission of offenses.

Art. 3.01. WORDS AND PHRASES

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined.

Art. 21.15. MUST ALLEGE ACTS OF RECKLESSNESS OR CRIMINAL NEGLIGENCE

Whenever recklessness or criminal negligence enters into or is a part or element of any offense, or it is charged that

the accused acted recklessly or with criminal negligence in the commission of an offense, the complaint, information, or indictment in order to be sufficient in any such case must allege, with reasonable certainty, the act or acts relied upon to constitute recklessness or criminal negligence, and in no event shall it be sufficient to allege merely that the accused, in committing the offense, acted recklessly or with criminal negligence.

Art. 18.10. WARRANT TO ARREST MAY ISSUE WITH SEARCH WARRANT

The magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge property concealed at a suspected place, or of having possession of implements designed for use in the commission of the offense of forgery or burglary, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be, in any legal manner, accused of being a coparty to any offense above enumerated.

Art. 49.16. IF SLAYER ARRESTED

If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was a party to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense.

Art. 49.18. WARRANT OF ARREST

When by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was a party to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ.

Art. 50.03. VERDICT

The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest its written signed verdict in which it shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, and in what manner. If such a jury is unable to so ascertain it shall find and certify accordingly.

Art. 16.05. WITNESS PLACED UNDER RULE

The magistrate shall, if requested by the accused or his

counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by any one witness shall not be heard by any of the others. However, if the defendant is a corporation or association, it may designate one representative in addition to counsel to assist at the examining trial, which representative may not be placed under the rule.

Art. 29.01. BY OPERATION OF LAW

Criminal actions are continued by operation of law if:

1. An individual defendant has not been arrested;

2. A defendant corporation or association has not been served with summons; or

3. There is not sufficient time for trial at that term of court.

Art. 36.03. WITNESS PLACED UNDER RULE

At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule. However, if the defendant is a corporation or association it may designate one representative in addition to counsel to aid in the presentation of its case, which representative may not be placed under the rule.

Art. 40.03. GROUNDS FOR NEW TRIAL IN FELONY

New trials, in cases of felony, shall be granted for the following causes, and for no other:

1. Where the defendant is an individual and has been tried in his absence, or has been denied counsel.

2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors.

4. Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct.

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial.

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits.

7. Where the jury, after having retired to deliberate upon a case, has received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring for deliberation, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere drinking of liquor by a juror shall not be sufficient ground for a new trial.

8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit.

9. Where the verdict is contrary to law and evidence. A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved.

10. Should the jury assess the death penalty when the State has made known, under the provisions of this Code, that it will not seek the death penalty, the court shall, upon written motion of the defendant, immediately grant a new trial.

Art. 43.01. DISCHARGING JUDGMENT FOR FINE

(a) When the sentence against an individual defendant is for fine and costs he shall be discharged from the same:

(1) when the amount thereof has been fully paid; or

(2) when remitted by the proper authority; or

(3) when he has remained in custody for the time required by law to satisfy the amount thereof.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

(1) when the amount thereof has been fully paid; or

(2) when the execution against the corporation or association has been fully satisfied; or

(3) when the judgment has been fully satisfied in any other manner.

Art. 26.13. PLEA OF GUILTY

If the defendant pleads guilty, or enters a plea of nolo contendere, he shall be admonished by the court of the consequences; and neither of such pleas shall be received unless it plainly appears that he is mentally competent, and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

Art. 27.17. PLEA OF NOT GUILTY CONSTRUED

The plea of not guilty shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence of every fact whatever tending to acquit the defendant of the accusation may be introduced, except such facts as are proper for a special plea under Article 27.05.

Art. 42.07. REASONS TO PREVENT SENTENCE

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is mentally incompetent.

3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and

4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

Art. 45.31. DEFENDANT SHALL PLEAD

After the jury is impaneled, or after the defendant has waived trial by jury, the defendant may plead guilty, not guilty, not guilty by reason of insanity, or may enter a plea of nolo contendere, or the special plea named in the succeeding Article.

Art. 6.05. DUTY OF PEACE OFFICER AS TO THREATS

It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to himself or to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens of his county.

Art. 6.06. PEACE OFFICER TO PREVENT INJURY

Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against

the person or property of another or to injure himself, it is his duty to prevent it; and, for this purpose the peace officer may summon any number of citizens of his county to his aid.

Art. 16.21. DUTY OF SHERIFF AS TO PRISONERS

Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner.

Art. 18.17. POWER OF OFFICER EXECUTING WARRANT

In the execution of a search warrant, the officer may call to his aid any number of citizens in his county, who shall be bound to aid in the execution of the same.

Art. 27.02. DEFENDANT'S PLEADINGS

On the part of the defendant, the following are the only pleadings:

(1) The motion to set aside the indictment or information.

(2) A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him.

(3) An exception to the indictment or information for some matter of form or substance.

(4) A plea of guilty.

(5) A plea of not guilty.

(6) A plea of not guilty by reason of insanity, which includes the plea of not guilty.

(7) A plea of nolo contendere. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

(8) A motion for jury probation.

Art. 27.13. PLEA OF GUILTY OR NOLO CONTENDERE IN FELONY

A plea of "guilty" or a plea of "nolo contendere" in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in Articles 26.13 and 42.02.

Art. 27.14. PLEA OF GUILTY OR NOLO CONTENDERE IN MISDEMEANOR

A plea of "guilty" or "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court, and the proceedings shall then be as provided in Articles 26.13 and 42.02. In a misdemeanor case arising out of a moving traffic violation for which the maximum possible punishment is

by fine only, payment of a fine, or an amount accepted by the court, constitutes a finding of guilty in open court as though a plea of nolo contendere had been entered by the defendant.

Art. 36.01. ORDER OF PROCEEDING IN TRIAL

A jury being impaneled in any criminal action, the cause shall proceed in the following order:

(1) The indictment or information shall be read to the jury by the attorney prosecuting.

(2) The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

(3) The prosecuting attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the state in support thereof.

(4) The testimony on the part of the state shall be offered.

(5) The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by the defendant's counsel.

(6) The testimony on the part of the defendant shall be offered.

(7) Rebutting testimony may be offered on the part of each party.

(8) In the event of a finding of guilty, the trial shall then proceed as set forth in Article 42.02.

Art. 42.01. JUDGMENT

(a) A "judgment" is the declaration of the court entered of record showing:

(1) the title and number of the case;

(2) that the case was called for trial and that the parties appeared;

(3) the plea of the defendant;

(4) the selection, impaneling and swearing of the jury;

(5) the submission of the evidence;

(6) that the jury was charged by the court;

(7) the return of the verdict;

(8) the verdict;

(9) in the case of conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged.

(b) The provisions of this Article shall apply to both felony and misdemeanor cases.

Art. 42.04. SENTENCE WHEN APPEAL IS TAKEN

When an appeal is taken from a death penalty, sentence shall not be pronounced, but shall be suspended until the decision of

the Court of Criminal Appeals has been received. In all other cases, except where imposition of sentence has been suspended in probation cases, sentence shall be pronounced before the appeal is taken.

Art. 42.06. SENTENCING NUNC PRO TUNC

If there is a failure from any cause whatever to enter judgment and pronounce sentence, the judgment may be entered and sentence pronounced at any subsequent time, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken.

Art. 42.12. ADULT PROBATION AND PAROLE LAW

* * * * * * * * * * *

Sec. 24. When any prisoner who has been paroled has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, the Board shall report such fact to the Governor prior to the issuance of the final order of discharge, together with its recommendation as to whether the prisoner should be restored to citizenship.

Art. 42.15. FINE

When the court sentences defendant to pay a fine, the sentence shall require the defendant to pay the fine to the state.

Art. 42.16. COSTS

(a) Unless the court for good cause provides otherwise, each sentence shall require the defendant to pay all costs of prosecution.

(b) The court may order all or part of the costs paid in installments or collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

Art. 43.03. PAY OR JAIL

(a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court may order him imprisoned in jail until discharged as provided by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) A term of imprisonment for default in payment of fine or costs or both may not exceed the maximum term of imprisonment authorized for the offense for which defendant was sentenced to pay the fine or costs or both.

(c) If a defendant is sentenced both to imprisonment and to pay a fine or costs or both, and he defaults in payment of either, a term of imprisonment for the default, when combined with the term of imprisonment already assessed, may not exceed

the maximum term of imprisonment authorized for the offense for which defendant was sentenced.

Art. 43.04. IF DEFENDANT IS ABSENT

If a defendant is sentenced in his absence to pay a fine or costs or both, the court may order a capias issued for his arrest. The sheriff shall execute the capias by bringing the defendant before the court or by placing the defendant in jail until he can be brought before the court.

Art. 43.05. CAPIAS SHALL RECITE WHAT

Where such capias issues, it shall state the rendition and amount of the judgment and sentence, and command the sheriff to bring the defendant before the court or place him in jail until he can be brought before the court.

Art. 44.08. NOTICE OF APPEAL

(a) It shall be necessary for defendant, as a condition of perfecting an appeal to the Court of Criminal Appeals, to give notice of appeal. This notice may be given orally in open court or may be in writing filed with the clerk. Such notice shall be sufficient if it shows the desire of the defendant to appeal from the judgment, from the sentence, or from both, to the Court of Criminal Appeals.

Art. 44.24. PRESUMPTIONS ON APPEAL; WRITTEN OPINION

(a) The court shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment, that the court's charge was certified by the judge and filed by the clerk before it was read to the jury; unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record.

(b) In each case by it decided, the Court of Criminal Appeals shall deliver a written opinion, setting forth in intelligible language the reason for such decision.

Art. 44.32. BAIL AFTER REVERSAL

When a felony case is reversed and remanded either for a new trial or for a new hearing on the sentence, the defendant shall be released from custody upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect.

Art. 45.34. PLEA OF GUILTY

Proof of the offense may be heard upon a plea of guilty and a plea of nolo contendere and the punishment assessed by the court.

Art. 45.42. VERDICT

When the jury has agreed upon a verdict, it shall bring

the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment thereon.

Art. 45.50. SENTENCE

When the justice sentences the defendant to pay a fine, the sentence shall require the defendant to pay the fine to the state.

Art. 45.51. CAPIAS

If a defendant is sentenced in his absence to pay a fine or costs or both, the justice may order a capias issued for his arrest. The capias shall be executed by bringing the defendant before the justice or by placing the defendant in jail until he can be brought before the justice.

Art. 45.52. COSTS

(a) Unless the justice for good cause provides otherwise, each sentence shall require the defendant to pay all costs of prosecution.

(b) The justice may order all or part of the costs paid in installments or collected by execution against the defendant's property in the same manner as a judgment in a civil suit.

Art. 45.53. PAY OR JAIL

(a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the justice may order him imprisoned in jail until discharged as provided by law. A certified copy of the judgment, sentence, and order is sufficient to authorize such imprisonment.

(b) A defendant imprisoned for default in payment of his fine or costs or both is entitled to discharge from jail:

(1) if he proves to the justice by a preponderance of the evidence that he is too poor to pay the fine and costs; and

(2) if he has been imprisoned in jail for five or more days following default in payment.

Art. 38.11. HUSBAND OR WIFE AS WITNESS

Neither husband nor wife shall, in any case, testify as to communications made by one to the other while married. Neither husband nor wife shall, in any case, after the marriage relation ceases, be made witnesses as to any communication made while the marriage relation existed except in a case where one or the other is on trial for an offense and a declaration or communication made by the wife to the husband or by the husband to the wife goes to extenuate or justify the offense. The husband and wife may, in all criminal actions, be witnesses for each other, but except as hereinafter provided, they shall in no case testify against each other in a criminal prosecution. However, a wife or husband may voluntarily testify against each other in any case for an offense involving any grade of assault or violence committed by one against the other or against any child of either under sixteen years of age, or in any

case where either is charged with incest of a child of either, or in any case where either is charged with bigamy, or in any case where either is charged with interference with child custody, or in any case where either is charged with nonsupport of his or her spouse or minor child.

Art. 18.26. SHALL DISCHARGE DEFENDANT

If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant, and order restitution of the property taken from him, except implements which appear to be designed for forging or burglary. In such case, the implements shall be kept by the sheriff subject to the order of the proper court.

Art. 20.16. OATHS TO WITNESSES

The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." Any witness who divulges any matter about which he is interrogated, or any proceedings of the grand jury had in his presence shall be liable to a fine as for contempt of court, not exceeding five hundred dollars, and to imprisonment not exceeding thirty days.

Art. 21.14. PERJURY AND AGGRAVATED PERJURY

An indictment for perjury or aggravated perjury need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleading, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or public servant by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury is assigned.

Art. 38.18. PERJURY AND AGGRAVATED PERJURY

(a) No person may be convicted of perjury or aggravated perjury if proof that his statement is false rests solely upon the testimony of one witness other than the defendant.

(b) Paragraph (a) does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

Art. 15.22. WHEN A PERSON IS ARRESTED

Except as provided in Articles 14.01 (stop and frisk) and 14.02 (halt and search at roadblock), a person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant.

(b) The Revised Civil Statutes of Texas, 1925, are amended by adding an article to read as follows:

Art. 1d. PRIVILEGE TO INVESTIGATE THEFT

A person reasonably believing another has stolen or is attempting to steal property is privileged to detain the person in a reasonable manner and for a reasonable period of time for the purpose of investigating ownership of the property.

(c) Article 1011, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

Art. 1011. POWERS

The City Council, or other governing body, shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not inconsistent with the Constitution or general laws of this State, for the good government, peace and order of the City and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government or in any department or office thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof. No fine or penalty shall exceed Two Hundred Dollars ($200).

(d) Article 7.01, Sections F and G, and Article 8.16, Sections F and G, of the Business Corporation Act, are amended to read as follows:

Art. 7.01. INVOLUNTARY DISSOLUTION

* * * * * * * * * * *

F. When a corporation is convicted of a criminal offense, or when a high managerial agent is convicted of a criminal offense in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in the district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of criminal conduct; and

(2) To prevent future criminal conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this Article.

Art. 8.16. REVOCATION OF CERTIFICATE OF AUTHORITY

* * * * * * * * * * *

F. When a foreign corporation is convicted of a criminal offense, or when a high managerial agent is convicted of a criminal offense committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to transact business in this State in a district court of the county in which the registered office of the foreign corporation in this State is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

(1) The foreign corporation, or a high managerial agent acting in behalf of the foreign corporation, has engaged in a persistent course of criminal conduct; and

(2) To prevent future criminal conduct of the same character, the public interest requires such revocation.

G. Article 7.02 of this Act does not apply to Section F of this Article.

(e) Article 7.01, Sections F and G, and Article 8.15, Sections F and G, of the Non-Profit Corporation Act (Articles 1396-7.01 and 1396-8.15, Vernon's Texas Civil Statutes) are amended to read as follows:

Art. 1396-7.01. INVOLUNTARY DISSOLUTION

* * * * * * * * * * *

F. When a corporation is convicted of a criminal offense, or when a high managerial agent is convicted of a criminal offense in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of criminal conduct; and

(2) To prevent future criminal conduct of the same character, the public interest requires such dissolution.

G. Article 1396-7.02 does not apply to Section F of this Article.

Art. 1396-8.15. REVOCATION OF CERTIFICATE OF AUTHORITY

* * * * * * * * * * *

F. When a foreign corporation is convicted of a criminal offense, or when a high managerial agent is convicted of a

criminal offense committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to conduct affairs in this State in a district court of the county in which the registered office of the foreign corporation in this State is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

(1) The foreign corporation, or a high managerial agent acting in behalf of the foreign corporation, has engaged in a persistent course of criminal conduct; and

(2) To prevent future criminal conduct of the same character, the public interest requires such revocation.

G. Article 1396-7.02 does not apply to Section F of this Article.

(f) Sections 18, 68, and 69 of the Mental Health Code (Articles 5547-18, 5547-68, and 5547-69, Vernon's Texas Civil Statutes) are amended to read as follows:

Art. 5547-18. LIABILITY

All persons acting in good faith, reasonably and without negligence in connection with the examination, certification, apprehension, custody, transportation, detention, treatment or discharge of any person, or in the performance of any other act required or authorized by this Code, shall be free from all civil liability by reason of such action.

Art. 5547-68. ADMISSION AND DETENTION

* * * * * * * * * *

(c) This Code does not affect admissions under:

(1) Acts 1951, Fifty-second Legislature, Chapter 398 (compiled as Texas Civil Statutes, Article 3196c (Vernon's 1952 Supplement); or

(2) the Code of Criminal Procedure.

Art. 5547-69. PERSONS CHARGED WITH CRIMINAL OFFENSE

The sections of this Code concerning the discharge of a patient are not applicable to a person admitted under the Code of Criminal Procedure.

(g) Article 5765, Section 8, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

Art. 5765. GENERAL PROVISIONS

* * * * * * * * * *

Sec. 8. Discharge of duty

Members of the State Military Forces ordered into active service of the State by proper authority shall not be liable civilly for any act or acts done by them while in the discharge of their duty. When a suit shall be commenced in any court

by any person against any officer of the State Military Forces for any act done by such officer in his official capacity in the discharge of his duty, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to the law, the court shall require the person instituting the suit to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. In case the plaintiff shall be nonsuited, or have a verdict of judgment rendered against him, the defendant shall recover treble costs.

(h) Articles 4664 and 4667, Revised Civil Statutes of Texas, 1925, are amended to read as follows:

Art. 4664. NUISANCE

Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or to which persons resort in assembling of two or more persons to the room for the purpose of drinking intoxicating liquor, or where intoxicating liquors are furnished to minors or to students or any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, is hereby declared to be a common nuisance. Any person who knowingly maintains such a place is guilty of maintaining a nuisance.

Art. 4667. GAMBLING AND PROSTITUTION HOUSES

(a) The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall be enjoined at the suit of either the State or a citizen thereof:

(1) for gambling or keeping any gambling device or record as prohibited by the Penal Code;

(2) for promoting or compelling prostitution as prohibited by the Penal Code.

(b) Any person who may use or be about to use, or who may be a party to the use of any such premises for any purpose mentioned in this Article may be made a party defendant in such suit. The Attorney General or any District or County Attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

(i) Chapter 361, Acts of the 48th Legislature, 1943 (Article 6184*l*, Vernon's Texas Civil Statutes) is amended to read as follows:

Art. 6184*l*. COMMUTATION FOR GOOD CONDUCT.

(a) In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline.

(b) Commutation of time for good conduct, industry and obedience shall be granted by the Director of Corrections, and twenty (20) days per month deduction shall be made from both the maximum term and any minimum term of imprisonment assessed against all prisoners in Class I; provided, however, that for State-approved trusties thirty (30) days deduction per month shall be made from both the maximum term and any minimum term of imprisonment assessed against such State-approved trusties, and ten (10) days per month deduction shall be made from both the maximum and any minimum term of imprisonment assessed against all prisoners in Class II as hereinafter provided, when no charge of misconduct has been sustained against a prisoner. A prisoner under two (2) or more consecutive terms of imprisonment shall be allowed commutation as if they were all one sentence.

(c) For each sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape), any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the Director upon the recommendation of the Classification Committee and/or the Disciplinary Committee unless, in case of escape, the prisoner voluntarily returns without expense to the State, such forfeiture shall be set aside by the Director. No overtime allowance or credits, in addition to the commutation of time herein provided for good conduct, may be deducted from the term or terms of sentences with the exception that for extra meritorious conduct on the part of any prisoner, he may be recommended to the Board of Pardons and Paroles and to the Governor for increased commutation or for a pardon or parole.

(d) This Act shall not take effect in the cases of those prisoners who at the time this Act takes effect are being credited with more than twenty (20) days per month by virtue of overtime job assignments except upon removal from such

assignment because of misconduct, escape, or return to prison because of violation of clemency; provided, however, should any prisoner be removed from any such assignment because of misconduct, an appeal shall lie to the Disciplinary Committee, and in the event of an adverse decision by said Disciplinary Committee, the prisoner so removed by reason of misconduct shall have the right to appeal to the Texas Board of Corrections, whose decision shall be final.

(e) When present overtime job assignments carrying more than twenty (20) days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty (20) days per calendar month.

(f) The Classification Committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in three (3) classifications: Class I, Class II, Class III, and reclassify any of such prisoners from time to time as in their opinion the circumstances may require.

Section 10. REPEALER. (a) The following laws are repealed:

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(b) The following sections of the Business and Commerce Code are repealed: 17.09, 17.10, 17.11, 17.12, 17.28, 17.29, 17.30, 25.01, 25.02, 25.03, 35.19.

(c) The following articles of the Code of Criminal Procedure, 1965, are repealed: 1.10, 1.11, 2.15, 2.24, 5.01-5.07, 6.07, 7.11, 7.12, 8.06, 15.15, 15.24, 15.25, 15.27, 18.18, 18.22, 22.01a, 26.14, 28.13, 37.13, 37.14, 38.07, 42.10; 42.12, § 3c; 42.12, § 6; 42.12, § 12; 42.13.

(d) The following articles of the Revised Civil Statutes of Texas, 1925, are repealed: 907; 1015, §§ 20-23; 6139-6142; 6876.

(e) The following laws are repealed: Chapter 164, Acts of the 59th Legislature, 1965; Chapter 2, Section 14, Acts of the 61st Legislature, 2nd Called Session, 1969 (Article 6145--9, § 14, Vernon's Texas Civil Statutes); Chapter 212, Section 23, Acts of the 40th Legislature, 1927 (Article 6166v, Vernon's Texas Civil Statutes).

Section 11. EFFECTIVE DATE. This act takes effect January 1, 1972.

Section 12. SAVING PROVISIONS. (a) Except as provided in Subsections (b) and (c), this Act applies only to offenses committed after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed after the effective date of this Act if any element of the offense occurs after the effective date.

(b) Conduct constituting an offense under existing law that is no longer an offense under this Act may not be prosecuted after the effective date of this Act. If on the effective date a criminal action is pending or a judgment of guilt has been obtained for conduct that does not constitute an offense under this Act, the action is dismissed, or the judgment of guilt reversed and action dismissed, on the effective date of this Act. However, a conviction existing on the effective date of this Act, for conduct constituting an offense under existing law, is valid and unaffected by this Act.

(c) In a criminal action pending on or commenced after the effective date of this Act, for an offense committed before the effective date:

(1) presumptions, exceptions, defenses, and affirmative defenses created by this Act apply; and

(2) procedural provisions of this Act apply; and

(3) the defendant if adjudged guilty shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

Section 13. EMERGENCY. The importance of this legislation and the crowded condition of the calendar in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and the rule is hereby suspended.

FORM C

(For a favorable report on a bill where a "committee substitute" was recommended by the committee.)

COMMITTEE REPORT

Date May 17, 1971,

HON. G. F. (GUS) MUTSCHER
Speaker of the House of Representatives.

Sir:

We, your Committee on Criminal Jurisprudence, to whom was referred H. B. No. 419, have had the same under consideration and beg to report back with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

The Bill was reported from Committee by the following vote:
~~Unanimous voice vote~~
Majority voice vote
~~Vote of ---- ayes and ---- nays.~~

Frank W. Calhoun, Chairman.

(A "committee substitute" in the case of a bill is in the form of two suggested amendments, a new body and a new caption. Under the Rules a committee may authorize the printing of the "committee substitute" in lieu of the original bill. If the original caption is adequate, the "committee substitute" should be only a new body; and in such case the original caption should be printed along with the suggested new body.)

H.B. No. 419

By Nugent of Kerr et al

A BILL TO BE ENTITLED

AN ACT

reforming the penal law; enacting a new Penal Code setting out general principles, defining offenses, and affixing punishments; making necessary conforming amendments to outside laws; repealing replaced laws; and declaring an emergency.

FILED FEB 4 1971

FEB 8 1971

READ 1ST TIME AND REFERRED TO COMMITTEE ON Criminal Jurisprudence

Dorothy Hallman

Chief Clerk, House of Representatives

MAY 19 1971 REPORTED FAVORABLY SENT TO PRINTER AS AMENDED

RECEIVED MAY 24 1971 HOUSE OF REPRESENTATIVES

DELIVERED MAY 1 1971 HOUSE OF REPRESENTATIVES

MAY 25 1971

Motion to postpone consideration of HB 419 until 9 hours, May 27, 1971 at 11:00 A.M. prevailed by non-record vote.

Dorothy Hallman

Chief Clerk, House of Representatives

MAY 27 1971

LAID ON THE TABLE SUBJECT TO CALL

Dorothy Hallman

Chief Clerk, House of Representatives