SENATE BILL NO. 34

NEVER RECEIVED

SENATE VERSIONS

of S.B. 34

By: Herring S.B. No. 34

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 law; repealing replaced law; 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

"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.
1.08. Preemption.

"Section 1.01. SHORT TITLE

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

"Section 1.02. OBJECTIVES OF CODE

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

"(1) to insure the public safety through:

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

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

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

"(2) by definition and grading of offenses to give

fair warning of what is prohibited and of the consequences of violation;

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

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

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

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

"Section 1.03. EFFECT OF CODE

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

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

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

"Section 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 an offense 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.

"Section 1.05. CONSTRUCTION OF CODE

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

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

"Section 1.06. COMPUTATION OF AGE

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

"Section 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 government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

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

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

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

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

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

"(11) 'Deadly weapon' means:

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

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

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

"(A) induced by 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.

"(13) 'Element of offense' means:

"(A) the forbidden conduct;

"(B) the required culpability;

"(C) any required result; and

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

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

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

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

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

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

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

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

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

"(22) 'Oath' includes affirmation.

"(23) 'Omission' means failure to act.

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

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

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

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

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

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

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

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

"(B) a juror or grand juror; or

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

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

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

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

"(31) 'Reasonable belief' means a belief which would be held by an ordinary and prudent man in the same circumstances

as the actor.

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

"(33) 'Rule' includes regulation.

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

"(35) 'Swear' includes affirm.

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

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

"Section 1.08. PREEMPTION

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

"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.

2.06. Prima Facie Case.

"Section 2.01. PROOF BEYOND A REASONABLE DOUBT

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

"Section 2.02. EXCEPTION

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

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

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

"Section 2.03. DEFENSE

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

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

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

"(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

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

"Section 2.04. AFFIRMATIVE DEFENSE

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

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

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

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

"Section 2.05. PRESUMPTION

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

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

finding beyond a reasonable doubt of the presumed fact; and

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

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

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

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

"(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the element to which the presumption applies, or any other element of the offense charged, they shall acquit the defendant and say by their verdict not guilty.

"Section 2.06. PRIMA FACIE CASE

"When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof.

"CHAPTER 3. MULTIPLE PROSECUTIONS

Section

3.01. Chapter Definitions.

3.02. Consolidation and Joinder of Prosecutions.

1 3.03. Sentences for Offenses Arising Out of Same Criminal Episode.
2 3.04. Severance.
3 "Section 3.01. CHAPTER DEFINITIONS
4 "In this chapter, unless the context requires a different
5 definition, 'criminal episode' means conduct arising incident to
6 the attempt or accomplishment of a single criminal objective or
7 that results in the repeated commission of any one offense defined
8 in Title 7 of this code, (Offenses Against Property).
9 "Section 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS
10 "(a) A defendant may be prosecuted in a single criminal
11 action for all offenses arising out of the same criminal episode.
12 "(b) When a single criminal action is based upon more than
13 one charging instrument within the jurisdiction of the trial
14 court, the state shall file written notice thereof not less than
15 30 days prior to the trial.
16 "(c) If a judgment of guilt is reversed, set aside or
17 vacated and a new trial ordered, the state may not prosecute in
18 a single criminal action in the new trial any offense not joined
19 in the former prosecution unless evidence to establish probable
20 guilt for that offense was not known to the appropriate prosecuting
21 official at the time the first prosecution commenced.
22 "Section 3.03. SENTENCES FOR OFFENSES ARISING OUT OF THE
23 SAME CRIMINAL EPISODE
24 "When the accused is found guilty of more than one offense
25 arising out of the same criminal episode prosecuted in a single
26 criminal action, sentence for each offense for which he has been

found guilty shall be pronounced. Such sentences shall run concurrently.

"Section 3.04. SEVERANCE

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

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

"TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

"CHAPTER 6. CULPABILITY GENERALLY

Section

6.01. Requirement of Voluntary Act or Omission.

6.02. Requirement of Culpability.

6.03. Definitions of Culpable Mental States.

6.04. Causation: Conduct and Results.

"Section 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION

"(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession, in violation of a statute which provides that the conduct is an offense.

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

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

"Section 6.02. REQUIREMENT OF CULPABILITY

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

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

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

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

"(1) intentional

"(2) knowing

"(3) reckless

"(4) criminal negligence

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

"Section 6.03. DEFINITIONS OF CULPABLE MENTAL STATES

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

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

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

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

exercise under all the circumstances as viewed from the actor's standpoint.

"Section 6.04. CAUSATION: CONDUCT AND RESULTS

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

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

"(1) a different offense was committed; or

"(2) a different person or property was injured, harmed or otherwise affected.

"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. Defenses Excluded.

"SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

7.21. Subchapter Definitions.

7.22. Criminal Responsibility of Corporation or Association.

7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation.

7.24. Defense to Criminal Responsibility of Corporation or Association.

"SUBCHAPTER A. COMPLICITY

"Section 7.01. PARTIES TO OFFENSES

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

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

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

"Section 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

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

"(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense; or

"(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids or attempts to aid the other person to commit the offense; or

"(3) having a legal duty to prevent commission of

the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

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

"Section 7.03. DEFENSES EXCLUDED

"In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to 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 of a different type or class of offense, or is immune from prosecution.

"SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

"Section 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 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.

"Section 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION

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

"(1) an offense defined in this code where corporations and associations are made subject thereto; or

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

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

"(b) A corporation is criminally responsible for a felony

offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

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

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

"Section 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF CF CORPORATION OR ASSOCIATION

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

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

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

"Section 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION

"(a) It is an affirmative defense to prosecution of a corporation or association under Section 7.22 (a)(1) or (a)(2)

of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

"(b) Subsection (a) of this section does not apply if it is plainly inconsistent with the legislative purpose expressed in the law defining the particular offense.

"CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Section

8.01. Insanity.

8.02. Mistake of Fact.

8.03. Mistake of Law.

8.04. Intoxication.

8.05. Duress.

8.06. Entrapment.

8.07. Age Affecting Criminal Responsibility.

"Section 8.01. INSANITY

"(a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated.

"(b) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

"Section 8.02. MISTAKE OF FACT

"(a) It is a defense to prosecution that the actor through

mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

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

"Section 8.03. MISTAKE OF LAW

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

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

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

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

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

"Section 8.04. INTOXICATION

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

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

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

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

"Section 8.05. DURESS

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

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

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

"(d) The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress.

"(e) 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.

"Section 8.06. ENTRAPMENT

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

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

"Section 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY

"(a) Except as provided by Subsection (c) of this section, a person may not be prosecuted or convicted for any offense that he committed when younger than 15 years.

"(b) Except as provided by Subsection (c) of this section, a person who is younger than 17 years may not be prosecuted or convicted for any offense, unless the juvenile court waives jurisdiction and certifies him for criminal prosecution.

"(c) Subsections (a) and (b) of this section shall not apply to prosecutions for:

"(1) Aggravated perjury, when it appears by proof that the actor 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.

"(d) No person who has been adjudged a delinquent child may be convicted of any offense alleged in the petition to adjudge him a delinquent child or any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the juvenile proceeding.

"(e) A person shall in no case be punished by death for an offense committed while he was younger than 17 years.

"CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

"SUBCHAPTER A. GENERAL PROVISIONS

Section

9.01. Chapter Definitions.
9.02. Justification as a Defense.
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9.61. Parent—Child.

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"SUBCHAPTER A. GENERAL PROVISIONS

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

"(3) 'Deadly force' means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

"Section 9.02. JUSTIFICATION AS A DEFENSE

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

"Section 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.

"Section 9.04. THREATS AS JUSTIFIABLE FORCE

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

"Section 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON

"Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if

in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

"Section 9.06. CIVIL REMEDIES UNAFFECTED

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

"SUBCHAPTER B. JUSTIFICATION GENERALLY

"Section 9.21. PUBLIC DUTY

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

"(b) The other sections of this chapter control when force is used against a person to protect persons (Sections 9.31 through 9.34), to protect property (Sections 9.41 through 9.44), for law enforcement (Sections 9.51 through 9.53), or by virtue of a special relationship (Sections 9.61 through 9.63).

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

"(d) The justification afforded by this section is available

if:

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

"(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.

"Section 9.22. 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.

"SUBCHAPTER C. PROTECTION OF PERSONS

"Section 9.31. SELF DEFENSE

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

use of unlawful force.

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

"(1) in response to verbal provocation alone; 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) of this section; 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 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 person's) use or attempted use of greater force than necessary.

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

"Section 9.32. DEADLY FORCE IN DEFENSE OF PERSON

"A person is justified in using deadly force against another:

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

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

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

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

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

"Section 9.33. DEFENSE OF A THIRD PERSON

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

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

he seeks to protect; and

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

"Section 9.34. PROTECTION OF LIFE OR HEALTH

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

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

"SUBCHAPTER D. PROTECTION OF PROPERTY

"Section 9.41. PROTECTION OF ONE'S OWN PROPERTY

"(a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

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

"Section 9.42. DEADLY FORCE TO PROTECT PROPERTY

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

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

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

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

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

"(3) he reasonably believes either:

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

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

"Section 9.43. PROTECTION OF THIRD PERSON'S PROPERTY

"A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if:

"(1) under the circumstances as he reasonably believes them to be the actor would be justified under Section 9.41 or Section 9.42 of this code in using force or deadly 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, movable property; or

"(3) the actor reasonably believes that:

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

"Section 9.44. USE OF DEVICE TO PROTECT PROPERTY

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

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

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

"SUBCHAPTER E. LAW ENFORCEMENT

"Section 9.51. ARREST AND SEARCH

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

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

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

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

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

"(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if:

"(1) the use of force would have been justified under Subsection (a) of this section; and either:

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

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

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

"(1) the use of force would have been justified under Subsection (b) of this section; and either:

"(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; or

"(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 using deadly force justified by Subsection (c) or (d) of this section.

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

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

"Section 9.52. USE OF FORCE TO PREVENT ESCAPE FROM CUSTODY

"The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is justified in using any force, including deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

"SUBCHAPTER F. SPECIAL RELATIONSHIPS

"Section 9.61. PARENT--CHILD

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

"(1) if the actor is the child's parent, stepparent or someone acting in loco parentis to the child, which definition shall include grandparent, guardian or any person acting by, through or under the direction of any court with jurisdiction over said child, or anyone who has express or implied consent of

the parent or parents; 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.

"Section 9.62. EDUCATOR--STUDENT

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

"(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

"(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

"Section 9.63. GUARDIAN--INCOMPETENT

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

"(1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and

"(2) when and to the degree the actor reasonably believes the force is necessary:

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

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

"TITLE 3. PUNISHMENTS

"CHAPTER 12. PUNISHMENTS

"SUBCHAPTER A. GENERAL PROVISIONS

Section

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

"SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

12.21. Class A Misdemeanor Punishment.
12.22. Class B Misdemeanor Punishment.
12.23. Class C Misdemeanor Punishment.

"SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

12.31. First Degree Felony Punishment.
12.32. Second Degree Felony Punishment.
12.33. Third Degree Felony Punishment.

"SUBCHAPTER D. EXCEPTIONAL SENTENCES

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

"SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

12.51. Authorized Punishments for Corporations and Associations.

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 12.01. PUNISHMENT IN ACCORDANCE WITH CODE

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

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

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

"Section 12.02. CLASSIFICATION OF OFFENSES

"Offenses are designated as felonies or misdemeanors.

"Section 12.03. CLASSIFICATION OF MISDEMEANORS

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

"(1) Class A misdemeanors;

"(2) Class B misdemeanors;

"(3) Class C misdemeanors.

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

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

"Section 12.04. CLASSIFICATION OF FELONIES

"(a) Felonies are classified according to the relative

seriousness of the offense into three categories:

"(1) felonies of the first degree;

"(2) felonies of the second degree;

"(3) felonies of the third degree.

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

"SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

"Section 12.21. CLASS A MISDEMEANOR

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

"(1) a fine not to exceed $2,000; or

"(2) confinement in jail for a term not to exceed one year; or

"(3) both such fine and imprisonment.

"Section 12.22. CLASS B MISDEMEANOR

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

"(1) a fine not to exceed $1,000; or

"(2) confinement in jail for a term not to exceed six months; or

"(3) both such fine and imprisonment.

"Section 12.23. CLASS C MISDEMEANOR

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

"SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

"Section 12.31. FIRST DEGREE FELONY PUNISHMENT

"An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years nor less than five years.

"Section 12.32. SECOND DEGREE FELONY PUNISHMENT

"(a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 20 years nor less than two years.

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

"Section 12.33. THIRD DEGREE FELONY PUNISHMENT

"(a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than ten years nor less than two years.

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

"SUBCHAPTER D. EXCEPTIONAL SENTENCES

"Section 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE

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

"(1) 'Felony of the third degree' if confinement in

a penitentiary is affixed thereto as a possible punishment for the offense.

"(2) 'Class B misdemeanor' if the offense is not a felony and confinement in a jail is affixed thereto as a possible punishment for the offense.

"(3) 'Class C misdemeanor' if the offense is punishable by fine only.

"Section 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS

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

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

"(c) If it be shown on the trial of a first degree felony that the defendant has been once before convicted of any felony, he shall upon conviction be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years nor less than 15 years.

"(d) If it be shown on the trial of any felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense which occurred subsequent to the first previous conviction having become final, he shall upon conviction be punished by confinement in the Texas Department of Corrections

for life.

"Section 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS

"(a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, he shall upon conviction be punished by confinement in jail for any term of not more than one year nor less than three months.

"(b) If it be shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, he shall upon conviction be punished by confinement in jail for any term of not more than six months nor less than one month.

"Section 12.44. REDUCTION OF THIRD DEGREE FELONY TO MISDEMEANOR

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

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

prosecuting attorney to initially prosecute for the lesser category of offense.

"Section 12.45. ADMISSION OF UNADJUDICATED OFFENSE

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

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

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

"SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

"Section 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS

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

"(b) If a corporation or association is adjudged guilty of any 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) of this section, 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.

"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.

"Section 15.01. CRIMINAL ATTEMPT

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

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

"(c) 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.

"Section 15.02. CRIMINAL CONSPIRACY

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

"(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

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

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

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

"(1) that one or more of the co-conspirators is not criminally responsible for the object offense; or

"(2) that one or more of the co-conspirators has been acquitted, so long as two or more co-conspirators have not been acquitted; or

"(3) that one or more of the co-conspirators has not been prosecuted or convicted, has been convicted of a different offense or is immune from prosecution; or

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

"(5) that the object offense was actually committed.

"(d) 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.

"Section 15.03. CRIMINAL SOLICITATION

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

"(b) A person may not be convicted under this section:

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

"(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 under this section:

"(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) An offense under this section is a felony of the second degree if the offense solicited is a felony of the first degree.

"Section 15.04. RENUNCIATION DEFENSE

"(a) It is an affirmative defense to prosecution under Section 15.01 of this code, 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 and 15.03 of this code, 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 took further affirmative action that prevented the commission of the object offense.

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

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

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

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

"Section 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.

"Section 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT

"(a) A person commits an offense if:

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

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

"(b) For purposes of this section, 'criminal instrument' means anything that is specially designed, made or adapted for the commission of an offense.

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

"TITLE 5. OFFENSES AGAINST THE PERSON

"CHAPTER 19. CRIMINAL HOMICIDE

Section

19.01. Types of Criminal Homicide.

19.02. Murder.

19.03. Voluntary Manslaughter.

19.04. Involuntary Manslaughter.

19.05. Evidence.

19.06. Criminally Negligent Homicide.

"Section 19.01. TYPES OF CRIMINAL HOMICIDE

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

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

"Section 19.02. MURDER

"(a) A person commits an offense if:

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

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

"(3) he commits or attempts to commit a felony, other than voluntary or involuntary 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 an individual.

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

"Section 19.03. VOLUNTARY MANSLAUGHTER

"(a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder

under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

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

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

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

"Section 19.04. INVOLUNTARY MANSLAUGHTER

"(a) A person commits an offense if:

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

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

"(b) 'Intoxication' means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

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

"Section 19.05. EVIDENCE

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

"Section 19.06. CRIMINALLY NEGLIGENT HOMICIDE

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

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

"CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Section

20.01. Chapter Definitions.

20.02. False Imprisonment.

20.03. Kidnapping.

20.04. Aggravated Kidnapping.

"Section 20.01. CHAPTER DEFINITIONS

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

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

"(A) physical force, intimidation or deception; or

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

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

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

"(B) using or threatening to use deadly physical force.

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

"Section 20.02. FALSE IMPRISONMENT

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

"(b) It is an affirmative defense that:

"(1) the person restrained is a child less than 14 years of age; and

"(2) the actor is a relative of the child; and

"(3) the actor's sole purpose is to assume lawful control of the child.

"(c) An offense under this section is:

"(1) a Class B misdemeanor; or

"(2) a felony of the third degree if the actor recklessly exposes the victim to a substantial risk of serious

bodily injury.

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

"Section 20.03. KIDNAPPING

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

"(b) It is an affirmative defense that:

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

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

"(3) the actor's sole purpose is to assume lawful control of the victim.

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

"Section 20.04. AGGRAVATED KIDNAPPING

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

"(1) hold him for ransom or reward; or

"(2) use him as a shield or hostage; or

"(3) facilitate the commission of any felony or flight thereafter; or

"(4) inflict physical injury upon him, or to violate or abuse him sexually; or

"(5) terrorize him or a third person; or

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

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

"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. Homosexual Conduct.
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.

"Section 21.01. CHAPTER DEFINITIONS

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

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

"(2) 'Sexual contact' means any touching of the anus or 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.

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

"Section 21.02. RAPE

"(a) A person commits an offense 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:

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

"Section 21.03. AGGRAVATED RAPE

"(a) A person commits an offense if he commits rape as defined in Section 21.02 of this code or rape of a child as defined in Section 21.09 of this code, and:

"(1) he causes serious bodily injury or attempts to cause death to the victim or 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.

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

"Section 21.04. SEXUAL ABUSE

"(a) A person commits an offense 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:

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

"Section 21.05. AGGRAVATED SEXUAL ABUSE

"(a) A person commits an offense if he commits sexual abuse as defined in Section 21.04 of this code or sexual abuse of a child as defined in Section 21.10 of this code, and:

"(1) he causes serious bodily injury or attempts to cause death to the victim or 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.

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

"Section 21.06. HOMOSEXUAL CONDUCT

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

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

"Section 21.07. PUBLIC LEWDNESS

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

"(1) an act of sexual intercourse;

"(2) an act of deviate sexual intercourse;

"(3) an act of sexual contact;

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

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

"Section 21.08. INDECENT EXPOSURE

"(a) A person commits an offense if he exposes his anus or any part of his genitals, with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

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

"Section 21.09. RAPE OF A CHILD

"(a) A person commits an offense if he has sexual intercourse with a female not his wife, and she is younger than 17 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.

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

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

"Section 21.10. SEXUAL ABUSE OF A CHILD

"(a) A person commits an offense 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 the child is younger than 17 years.

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

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

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

"Section 21.11. INDECENCY WITH A CHILD

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

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

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

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

"(1) sexual intercourse;

"(2) deviate sexual intercourse;

"(3) sexual contact;

"(4) indecent exposure as defined in Subsection (a)(2) of this code.

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

"Section 21.12. GENERAL PROVISIONS

"The exclusion of conduct with a spouse from the definitions of offenses in Sections 21.02 through 21.05 of this code (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.

"CHAPTER 22. ASSAULTIVE OFFENSES

Section

22.01. Assault.
22.02. Aggravated Assault.
22.03. Deadly Assault on a Peace Officer.
22.04. Injury to a Child.
22.05. Reckless Conduct.
22.06. Consent as Defense to Assaultive Conduct.
22.07. Terroristic Threat.
22.08. Aiding Suicide.

"Section 22.01. ASSAULT

"(a) A person commits an offense if:

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

"(2) he intentionally or knowingly threatens another with imminent bodily injury; or

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

"(b) An offense under this section is a Class A misdemeanor unless the offense is committed under Subsections (a)(2) and (3) of this section, in which event it is a Class C misdemeanor.

"Section 22.02. AGGRAVATED ASSAULT

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

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

"(2) he causes bodily injury to a peace officer in the lawful discharge of official duty when he knows or has been informed the person assaulted is a peace officer; or

"(3) he uses a deadly weapon.

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

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

"Section 22.03. DEADLY ASSAULT ON A PEACE OFFICER

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

bodily injury to a peace officer in the lawful discharge of official duty where he knows or has been informed the person assaulted is a peace officer.

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

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

"Section 22.04. INJURY TO A CHILD

"(a) A person commits an offense when he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct which causes serious bodily injury, serious physical or mental deficiency or impairment, or deformity to a child who is 14 years of age or under.

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

"Section 22.05. RECKLESS CONDUCT

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

"(b) Recklessness and danger shall be presumed where a person knowingly points a firearm at or in the direction of another whether or not the actor believes the firearm to be loaded.

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

"Section 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT

"The victim's effective consent, or the actor's reasonable

belief that the victim consented, to the actor's conduct is a defense to prosecution under Section 22.01 (assault), 22.02 (aggravated assault), or 22.05 (reckless conduct) of this code if:

"(1) the conduct did not threaten or inflict serious bodily injury; or

"(2) the victim knew the conduct was a risk of:

"(A) his occupation; or

"(B) recognized medical treatment; or

"(C) a scientific experiment conducted by recognized methods.

"Section 22.07. TERRORISTIC THREAT

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

"(1) to cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies; or

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

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

"(b) An offense under this section is a Class B misdemeanor unless committed under Section (a)(3) above, in which event it

is a Class A misdemeanor.

"Section 22.08. AIDING SUICIDE

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

"(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide, or attempted suicide resulting in serious bodily injury, in which event the offense is a felony of the third degree.

"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. Enticing a Child.

25.05. Criminal Nonsupport.

"Section 25.01. BIGAMY

"(a) An individual commits an offense if:

"(1) he is legally married; and

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

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

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

"(3) 'Under the appearance of being married' as defined in this section means holding out that the parties are married with cohabitation and an intent to be married by either party.

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

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

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

"Section 25.02. INCEST

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

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

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; or

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

"(b) For the purposes of this section:

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

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

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

"Section 25.03. INTERFERENCE WITH CHILD CUSTODY

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

"(1) he knows that his taking or retention violates a temporary or permanent judgment or order of a court 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) of this section 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.

"Section 25.04. ENTICING A CHILD

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

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

"Section 25.05. CRIMINAL NONSUPPORT

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

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

"(c) For purposes of this section, 'insufficient support' is that support less than the support needed by such child or spouse to meet the minimal requirements of such child or spouse

necessary for food, clothing, shelter and medical care.

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

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

"(f) It shall be an affirmative defense that the actor could not provide that support which he was legally obligated to provide.

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

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

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

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

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

"TITLE 7. OFFENSES AGAINST PROPERTY

"CHAPTER 28. ARSON, CRIMINAL MISCHIEF, 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.

"Section 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) 'Building' means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament or use.

"(3) 'Property' means:

"(A) real property; 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.

"Section 28.02. ARSON

"(a) A person commits an offense 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) An offense under this section is a felony of the second degree, unless any bodily injury less than death is suffered by any person by reason of the commission of this offense, in which event it is a felony of the first degree.

"Section 28.03. CRIMINAL MISCHIEF

"(a) A person commits an offense if, without the effective consent of the owner:

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

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

"(b) An offense under this section is:

"(1) a Class C misdemeanor if:

"(A) the amount of pecuniary loss was less than $5; or

"(B) except as provided in Subdivision (4)(B) of this subsection, it caused substantial inconvenience to others;

"(2) a Class B misdemeanor if the amount of pecuniary loss was $5 or more but less than $20;

"(3) a Class A misdemeanor if the amount of pecuniary loss was $20 or more but less than $200;

"(4) a felony of the third degree if:

"(A) the amount of pecuniary loss was $200 or more but less than $10,000;

"(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;

"(C) regardless of the pecuniary loss, if the property was one or more head of cattle, horses, sheep, swine, goats or any part thereof;

"(D) regardless of the pecuniary loss, if the property was a fence used for the production of cattle, horses, sheep, swine or goats;

"(E) regardless of the pecuniary loss, if the property was one or more head of cattle, horses, sheep, swine or goats and the damage was inflicted by the branding of such animal;

"(5) a felony of the second degree if the amount of the pecuniary loss was $10,000 or more.

"Section 28.04. RECKLESS DAMAGE OR DESTRUCTION

"(a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

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

"Section 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.

"Section 28.06. AMOUNT OF PECUNIARY LOSS

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

"(1) the fair market value of the property at the

time and place of the destruction; or

"(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

"(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

"(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

"(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

"(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage, if the document is other than evidence of a debt.

"(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) of this section, the amount of loss is deemed to be greater than $20 but less than $200.

"(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

"(1) the amount of pecuniary loss if the property

is destroyed; or

"(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

"CHAPTER 29. ROBBERY

Section

29.01. Chapter Definitions.

29.02. Robbery.

29.03. Aggravated Robbery.

"Section 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.

"Section 29.02. ROBBERY

"(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 of this code 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) An offense under this section is a felony of the second degree.

"Section 29.03. AGGRAVATED ROBBERY

"(a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and:

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

"(2) he uses or exhibits a deadly weapon.

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

"CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Section

30.01. Chapter Definitions.
30.02. Burglary.
30.03. Burglary of Coin-Operated Machines.
30.04. Burglary of Vehicles.
30.05. Criminal Trespass.

"Section 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) 'Building' means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament or use.

"(3) 'Vehicle' includes any device in, upon, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as 'habitation.'

"Section 30.02. BURGLARY

"(a) A person commits an offense if, without the effective consent of the owner:

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

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

"(3) he enters a building or habitation and commits or attempts to commit a felony or theft.

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

"(1) to intrude any part of the body; or

"(2) to intrude any physical object connected with the body.

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

"(d) An offense under this section is a felony of the first

degree if:

"(1) the premises are a habitation; or

"(2) any party to the offense was armed with explosives or a deadly weapon; or

"(3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight therefrom.

"Section 30.03. BURGLARY OF COIN-OPERATED MACHINES

"(a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine or other coin-operated contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

"(b) For purposes of this section, 'entry' includes every kind of entry except one made with the effective consent of the owner.

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

"Section 30.04. BURGLARY OF VEHICLES

"(a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part thereof with intent to commit any felony or theft.

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

"(1) to intrude any part of the body; or

"(2) to intrude any physical object connected with the body.

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

"Section 30.05. CRIMINAL TRESPASS

"(a) A person commits an offense if he enters or remains on property or in a building of another without effective consent, and he:

"(1) had notice that the entry was forbidden; or

"(2) received notice to depart but failed to do so.

"(b) For purposes of this section:

"(1) 'entry' means the intrusion of the entire body; and

"(2) 'notice' means:

"(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

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

"(C) signs posted to be reasonably likely to come to the attention of intruders.

"(c) An offense under this section is a Class C misdemeanor unless it was committed in a habitation, in which event it is a Class A misdemeanor.

"CHAPTER 31. THEFT

"Section

31.01. Chapter Definitions.
31.02. Consolidation of Theft Offenses.
31.03. Theft.

31.04. Theft of Service.

31.05. Theft of Trade Secrets.

31.06. Presumption for Theft by Check.

31.07. Unauthorized Use of a Vehicle.

31.08. Value.

31.09. Aggregation of Amounts Involved in Theft.

31.10. Actor's Interest in Property.

"Section 31.01. CHAPTER DEFINITIONS

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

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

"(A) to commit an offense; or

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

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

"(D) to expose a 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 a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true; 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) 'Obtain' means to bring about a transfer or purported transfer of a nonpossessory interest in property, whether to the actor or another.

"(5) '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.

"(6) '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.

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

"Section 31.02. CONSOLIDATION OF THEFT OFFENSES

"Theft as defined in Section 31.03 of this code constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by

threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

"Section 31.03. THEFT

"(a) A person commits an offense 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 owner's effective consent; or

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

"(c) For purposes of Subsection (b)(2) of this section, evidence that the actor has previously participated in recent transactions other than, but similar to, that upon which the prosecution is based shall be admissible for the purpose of showing guilty knowledge or intent and the issues of guilty knowledge or intent shall be raised by the actor's plea of not guilty. Further, the testimony of an accomplice shall be corroborated by proof which tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of said accomplice.

"(d) An offense under this section is:

"(1) a Class C misdemeanor if the value of the property stolen is less than $5;

"(2) a Class B misdemeanor if:

"(A) the value of the property stolen was $200 or more but less than $10,000; or such property was one or more head of cattle, horses, sheep, swine or goats or any part thereof under the value of $10,000;

"(B) the value of the property stolen was less than $5 and the defendant has previously been convicted of any grade of theft.

"(3) a Class A misdemeanor if the value of the property stolen is $20 or more but less than $200.

"(4) a felony of the third degree if:

"(A) the value of the property stolen was $200 or more but less than $10,000; or such property was one or more head of cattle, horses, sheep, swine, or goats under the value of $10,000; or

"(B) regardless of value, the property was stolen from the person of another or from a human corpse or grave; or

"(C) the value of the property stolen was less than $200 and the defendant has been previously convicted two or more times of any grade of theft.

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

"Section 31.04. THEFT OF SERVICE

"(a) A person commits theft of service if, with intent to

avoid payment for service that he knows is provided only for compensation:

"(1) he intentionally or knowingly secures performance of the service by deception, threat or false token; or

"(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly 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, as in hotels, restaurants and comparable establishments.

"(c) An offense under this section is:

"(1) a Class C misdemeanor if the value of the service stolen is less than $5;

"(2) a Class B misdemeanor if the value of the service stolen is $5 or more but less than $20;

"(3) a Class A misdemeanor if the value of the service stolen is $20 or more but less than $200;

"(4) a felony of the third degree if the value of the service stolen is $200 or more but less than $10,000;

"(5) a felony of the second degree if the value of the service stolen is $10,000 or more.

"Section 31.05. THEFT OF TRADE SECRETS.

"(a) For purposes of this section:

"(1) 'Article' means any object, material, device, substance, or copy thereof, including any writing, recording, drawing, sample, specimen, prototype, model, photograph, micro-organism, blueprint, or map.

"(2) 'Copy' means any facsimile, replica, photograph,

or other reproduction of an article and any note, drawing or sketch made of or from an article.

"(3) 'Representing' means describing, depicting, containing, constituting, reflecting, or recording.

"(4) 'Trade secret' means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement which has value and which the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

"(b) A person commits an offense if, without the owners effective consent, he knowingly:

"(1) steals a trade secret;

"(2) makes or causes to be made a copy of an article representing a trade secret; or

"(3) communicates or transmits a trade secret.

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

"Section 31.06. 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 of this code (Theft) or to avoid payment for service under Section 31.04 of this code (Theft of Service) is presumed (except in the case of a post-dated check or order) if:

"(1) he 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 pay the holder in full within 10 days after receiving notice of that refusal.

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

"(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 written notice is given in accordance with Subsection (b) of this section, it is presumed that the notice was received no later than five days after it was sent.

"(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

"Section 31.07. UNAUTHORIZED USE OF A VEHICLE

"(a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

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

"Section 31.08. VALUE

"(a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

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

"(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a

reasonable time after the theft.

"(b) The value of documents, other than those having a readily ascertainable market value, is:

"(1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or

"(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

"(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

"(d) if the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsections (a), (b), or (c) to determine value for purposes of this chapter.

"Section 31.09. AGGREGATION OF AMOUNTS INVOLVED IN THEFT

"When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

"Section 31.10. ACTOR'S INTEREST IN PROPERTY

"It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

"CHAPTER 32. FRAUD

"SUBCHAPTER A. GENERAL PROVISIONS

"Section

32.01. Chapter Definitions.

32.02. Value.

32.03. Aggregation of Amounts Involved in Fraud.

"SUBCHAPTER B. FORGERY

32.21. Forgery.

32.22. Criminal Simulation.

"SUBCHAPTER C. CREDIT

32.31. Credit Card Abuse.

32.32. False Statement to Obtain Property or Credit.

32.33. Hindering Secured Creditors.

32.34. Fraud in Insolvency.

32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution.

"SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

32.41. Issuance of Bad Check.

32.42. Deceptive Business Practices.

32.43. Commercial Bribery.

32.44. Rigging Publicly Exhibited Contest.

32.45. Misapplication of Fiduciary Property or Property of Financial Institution.

32.46. Securing Execution of Document by Deception.

32.47. Fraudulent Destruction, Removal, or Concealment of Writing.

32.48. Endless Chain Scheme.

"SUBCHAPTER A. GENERAL PROVISIONS

"Section 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) '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.

"(3) '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.

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

"Section 32.02. VALUE

"(a) Subject to the additional criteria of Subsections (b) through (c) of this section, value under this chapter is:

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

"(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a

reasonable time after the offense.

"(b) The value of documents, other than those having a readily ascertainable market value, is:

"(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

"(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

"(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

"(d) if the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsections (a), (b), or (c) to determine value for purposes of this chapter.

"Section 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD

"When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

"SUBCHAPTER B. FORGERY

"Section 32.21. FORGERY

"(a) For purposes of this section:

"(1) 'Forge' means:

"(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

"(i) to be the act of another who did not authorize that act; 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) of this subsection; 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) of this subsection.

"(2) 'Writing' includes:

"(A) printing or any other method of recording information;

"(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

"(C) symbols of value, right, privilege, or identification.

"(b) A person commits an offense if he forges a writing

with intent to defraud or harm another.

"(c) Except as provided in Subsections (d) and (e) of this section an offense under this section is a Class A misdemeanor.

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

"(e) An offense under this section is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

"Section 32.22. CRIMINAL SIMULATION

"(a) A person commits an offense if, with intent to defraud or harm another:

"(1) he makes or alters an object, in whole or 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) An offense under this section is a Class A misdemeanor.

"SUBCHAPTER C. CREDIT

"Section 32.31. CREDIT CARD ABUSE

"(a) For purposes of this section:

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

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

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

"(b) A person commits an offense if:

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

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

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

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

description of a fictitious credit card; or

"(3) he receives property or service that he knows has been obtained in violation of this section; or

"(4) 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

"(5) he buys a credit card from a person who he knows is not the issuer; or

"(6) not being the issuer, he sells a credit card; or

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

"(8) 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

"(9) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a credit card is incomplete if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted or written on it; or

"(10) being authorized by an issuer to furnish goods

or services upon presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services upon presentation of a credit card obtained or retained in violation of this article or a credit card which is forged, expired, or revoked; or

"(11) being authorized by an issuer to furnish goods or services upon presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services which he represents in writing to the issuer that he has furnished.

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

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

"Section 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT

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

"(1) a loan of money; and

"(2) furnishing property or service on credit; and

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

"(4) co-making, 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 of this code (Credit Card Abuse).

"(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

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

"Section 32.33. HINDERING SECURED CREDITORS

"(a) For purposes of this section:

"(1) 'Remove' means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

"(2) 'Security interest' means an interest in personal property or fixtures that secures payment or performance of an obligation.

"(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property.

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

"(1) to pay the part then due; and

"(2) if the secured party has made demand, to deliver possession of the secured property to the secured party.

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

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

"Section 32.34. FRAUD IN INSOLVENCY

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

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

1 administer property for the benefit of creditors, the existence,
2 amount, or location of the property, or any other information
3 that the actor could legally be required to furnish in relation
4 to the administration.
5 "(b) An offense under this section is a Class A misdemeanor.
6 "Section 32.35. RECEIVING DEPOSIT, PREMIUM OR INVESTMENT
7 IN FAILING FINANCIAL INSTITUTION
8 "(a) A person directing or participating in the direction
9 of a financial institution commits an offense if he receives or
10 permits the receipt of a deposit, premium payment or investment
11 in the institution knowing that, due to the financial condition
12 of the institution:
13 "(1) it is unable to make payment of the deposit on
14 demand, if it is a deposit ordinarily payable on demand; or
15 "(2) it is about to suspend operations or go into
16 receivership.
17 "(b) It is a defense to prosecution under this section
18 that the person making the deposit, premium payment, or investment
19 was adequately informed of the financial condition of the
20 institution.
21 "(c) An offense under this section is a Class A misdemeanor.
22 "SUBCHAPTER D. OTHER DECEPTIVE PRACTICES
23 "Section 32.41. ISSUANCE OF BAD CHECK
24 "(a) A person commits an offense if he issues or passes
25 a check or similar sight order for the payment of money knowing
26 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) of this section 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 crder; 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) of this section, it is presumed that the notice was received no later than five days after it was sent.

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

1 "Section 32.42. DECEPTIVE BUSINESS PRACTICES

2 "(a) For purposes of this section:

3 "(1) 'Adulterated' means varying from the standard
4 of composition or quality prescribed by law or set by established
5 commercial usage.

6 "(2) 'Business' includes trade and commerce and
7 advertising, selling, and buying service or property.

8 "(3) 'Commodity' means any tangible or intangible
9 personal property.

10 "(4) 'Contest' includes sweepstake, puzzle, and game
11 of chance.

12 "(5) 'Deceptive sales contest' means a sales contest:

13 "(A) that misrepresents the participant's chance
14 of winning a prize; or

15 "(B) that fails to disclose to participants on
16 a conspicuously displayed permanent poster (if the contest is
17 conducted by or through a retail outlet) or on each card game
18 piece, entry blank, or other paraphernalia required for
19 participation in the contest (if the contest is not conducted by
20 or through a retail outlet):

21 "(i) the geographical area or number of
22 outlets in which the contest is to be conducted; and

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

25 "(iii) the minimum number and minimum amount
26 of cash prizes; and

"(iv) the minimum number of each other type of prize; or

"(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

"(6) 'Mislabeled' means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

"(7) 'Prize' includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

"(8) 'Sales contest' means:

"(A) 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.

"(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal

negligence commits one or more of the following deceptive business practices:

"(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity; 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 statement:

"(A) in an advertisement for the purchase or sale of property or service; or

"(B) otherwise in connection with the purchase or sale of property or service.

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

"Section 32.43. COMMERCIAL BRIBERY

"(a) For purposes of this section:

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

"(2) 'Fiduciary' means:

"(A) an agent or employee; 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.

"(b) A person 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.

"(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) of this section.

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

"Section 32.44. RIGGING PUBLICLY EXHIBITED CONTEST

"(a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

"(1) he offers, confers, or agrees to confer any benefit 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) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) of this section.

"(c) Except as provided in Subsection (d) of this section,

an offense under this section is a Class A misdemeanor.

"(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.

"Section 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION

"(a) For purposes of this section:

"(1) 'Fiduciary' includes:

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

"(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary, or property of a financial institution, in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

"(c) An offense under this section is:

"(1) a Class A misdemeanor if the value of the property misapplied was less than $200; and

"(2) a felony of the third degree if the value of the property was $200 or more but less than $10,000; and

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

"Section 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION

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

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

"Section 32.47. FRAUDULENT DESTRUCTION, REMOVAL OR CONCEALMENT OF WRITING

"(a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

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

"(1) printing or any other method of recording information; and

"(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks; and

"(3) symbols of value, right, privilege, or identification; and

"(4) labels, price tags or markings on goods.

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

"(d) An offense under this section is a felony of the third degree if the writing:

"(1) is a will or codicil of another, whether or not the maker is alive or dead, and whether or not it has been admitted to probate; or

"(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

"Section 32.48. ENDLESS CHAIN SCHEME

"(a) For the purposes of this section:

"(1) 'Endless chain' means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

"(2) 'Compensation' does not mean or include payment based upon sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

"(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an

endless chain.

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

"TITLE 8. OFFENSES AGAINST THE STATE AND PUBLIC ADMINISTRATION

"CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

"Section

36.01. Chapter Definitions.
36.02. Bribery.
36.03. Coercion of Public Servant or Voter.
36.04. Improper Influence.
36.05. Tampering with Witness.
36.06. Retaliation.
36.07. Compensation for Past Official Behavior.
36.08. Gift to Public Servant by Person Subject to his Jurisdiction.
36.09. Offering Gift to Public Servant.
36.10. Defenses.

"Section 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 detained or 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.

"Section 36.02. BRIBERY

"(a) A person commits an offense 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 an offense

if he knowingly 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 an offense if he knowingly 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) An offense under this section is a felony of the third degree unless committed under Subsection (b) of this section, in which event it is a felony of the second degree.

"Section 36.03. COERCION OF PUBLIC SERVANT OR VOTER

"(A) A person 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 a felony of the third degree.

"Section 36.04. IMPROPER INFLUENCE

"(a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official

discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceedings 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.

"Section 36.05. TAMPERING WITH WITNESS

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

"(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 knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) of this section.

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

"Section 36.06. RETALIATION

"(a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness or informant.

"(b) For purposes of this section, 'informant' means a person who has communicated information to the government in connection with any governmental function.

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

"Section 36.07. COMPENSATION FOR PAST OFFICIAL BEHAVIOR

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

"Section 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 decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in

any matter before the public servant or tribunal.

"(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from 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.

"Section 36.09. OFFERING GIFT TO PUBLIC SERVANT

"(a) A person 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.

"Section 36.10. DEFENSES

"(a) 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) of this code that the benefit involved was:

"(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled; or

"(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

"(3) a trivial benefit incidental to personal, professional, or business contacts, which involves no substantial

risk of undermining official impartiality; or

"(4) 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.

"Section 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.

"Section 37.02. PERJURY

"(a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

"(1) he makes a false statement under oath, or swears to the truth of a false statement previously made; and

"(2) the statement is required or authorized by law to be made under oath.

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

"Section 37.03. AGGRAVATED PERJURY

"(a) A person commits an offense if he commits perjury as defined in Section 37.02 of this code, and:

"(1) the false statement is made during or in connection with an official proceeding; and

"(2) the false statement is material.

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

"Section 37.04. MATERIALITY

"(a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

"(b) It is no defense to prosecution under Section 37.03

of this code (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

"(c) Whether a statement is material in a given factual situation is a question of law.

"Section 37.05. RETRACTION

"It is a defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the actor retracted his false statement:

"(1) before completion of the testimony at the official proceeding; and

"(2) before it became manifest that the falsity of the statement would be exposed.

"Section 37.06. INCONSISTENT STATEMENTS

"An information or indictment for perjury under Section 37.02 of this code or aggravated perjury under Section 37.03 of this code that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

"Section 37.07. IRREGULARITIES NO DEFENSE

"(a) It is no defense to prosecution under Section 37.02 of this code (Perjury) or 37.03 of this code (Aggravated Perjury) that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

"(b) It is no defense to prosecution under Section 37.02

of this code (Perjury) or 37.03 of this code (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.

"Section 37.08. FALSE REPORT TO PEACE OFFICER

"(a) A person 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.

"Section 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE

"(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress:

"(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) This section shall not apply if the record, document,

or thing concealed, is privileged, or is the work product of the parties to the investigation or official proceeding.

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

"Section 37.10. TAMPERING WITH GOVERNMENTAL RECORD

"(a) A person 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) of this section that the governmental record is destroyed pursuant to legal authorization.

"(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

"Section 37.11. IMPERSONATING PUBLIC SERVANT

"(a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely upon his pretended official acts.

"(b) An offense under this section is a Class A misdemeanor unless the public servant impersonated was a peace officer, in

which event it is a felony of the third degree.

"CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

"Section

38.01. Chapter Definitions.

38.02. Failure to Identify as Witness.

38.03. Resisting Arrest or Search.

38.04. Evading Arrest.

38.05. Hindering Apprehension or Prosecution.

38.06. Compounding.

38.07. Escape.

38.08. Permitting or Facilitating Escape.

38.09. Effect of Unlawful Custody.

38.10. Implements for Escape.

38.11. Bail Jumping and Failure to Appear.

38.12. Barratry.

38.13. Hindering Proceedings by Disorderly Conduct.

"Section 38.01. CHAPTER DEFINITIONS

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

"(1) 'Complaining witness' means the victim of a crime or a person who signs a criminal complaint.

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

"(3) 'Escape' means unauthorized departure from custody or failure to return to custody following temporary leave

for a specific purpose or limited period, but does not include a violation of conditicns of probation or parole.

"(4) 'Governmental function' includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

"(5) 'Official proceeding' means:

"(A) a proceeding before a magistrate, court, or grand jury of this state;

"(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

"(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

"(D) a proceeding which otherwise is made expressly subject to this section.

"Section 38.02. FAILURE TO IDENTIFY AS WITNESS

"(a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

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

"Section 38.03. RESISTING ARREST OR SEARCH

"(a) A person commits an offense if he intentionally

prevents or obstructs a person he knows is a peace officer, or a person acting in a peace officer's presence and at his direction, from effecting an arrest or search of the actor or another by using force against the peace officer or another.

"(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

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

"(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

"Section 38.04. EVADING ARREST

"(a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him.

"(b) It is an exception to the application of this section that the attempted arrest is unlawful.

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

"Section 38.05. HINDERING APPREHENSION OR PROSECUTION

"(a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense:

"(1) he harbors or conceals the other;

"(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 Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

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

"Section 38.06. COMPOUNDING

"(a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

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

"Section 38.07. ESCAPE

"(a) A person arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

"(b) Except as provided in Subsections (c) and (d) of this section, an offense under this section is a Class A misdemeanor.

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

"(1) the actor was under arrest for, charged with, or convicted of a felony; or

"(2) the actor was confined in a penal institution.

"(d) An offense under this section is a felony of the second degree if the actor used or threatened to use a deadly weapon to effect his escape.

"Section 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) A person commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

"(1) an allegation or adjudication of delinquency; or

"(2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

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

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

"(1) the person in custody was under arrest for, charged with or convicted of a felony;

"(2) the person in custody was confined in a penal institution;

"(3) the actor used or threatened to use a deadly weapon to effect the escape; or

"(4) the offense under Subsection (a) of this section was committed intentionally.

"Section 38.09. EFFECT OF UNLAWFUL CUSTODY

"It is no defense to prosecution under Section 38.07 of this code (Escape) or Section 38.08 of this code (Facilitating

Escape) that the custody was unlawful.

"Section 38.10. IMPLEMENTS FOR ESCAPE

"(a) A person commits an offense if, with intent to facilitate escape, he introduces into a penal institution, or provides an inmate with, a deadly weapon or anything that may be useful for escape.

"(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

"Section 38.11. BAIL JUMPING AND FAILURE TO APPEAR

"(a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear, commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

"(b) This section does not apply to appearances incident to probation or parole.

"(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

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

"(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

"(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required

is classified as a felony.

"Section 38.12. BARRATRY

"(a) A person commits an offense 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 for himself or another to prosecute or defend a suit or to collect a claim; or

"(4) he procures another to solicit for him employment to prosecute or defend a suit or to collect a claim.

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

"Section 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT

"(a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

"(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

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

"CHAPTER 39. ABUSE OF OFFICE

"Section

39.01. Official Misconduct.

39.02. Official Oppression.

39.03. Misuse of Official Information.

"Section 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; or

"(5) takes or misapplies any thing of value belonging to the government that may have come into his custody or possession by virtue of his employment, or secretes the same with intent to take or misapply it, or pays or delivers the same to any person knowing that such person is not entitled to receive it.

"(b) For purposes of Subsection (a)(2) of this section, 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 Subsections (a)(1) through (a)(4) of this section is a Class A misdemeanor. An offense under

Subsection (a)(5) of this section is a felony of the third degree.

"Section 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, 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.

"Section 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. Shooting on Public Road.

"Section 42.01. DISORDERLY CONDUCT

"(a) A person commits an offense if he intentionally or knowingly:

"(1) uses abusive, indecent, profane or vulgar language in a public place, which words by their very utterance tend to incite an immediate breach of the peace; or

"(2) makes an offensive gesture or display in a public place, which gesture or display tends to incite an immediate breach of the peace; or

"(3) creates, by chemical means, a noxious and unreasonable odor in a public place; or

"(4) abuses or threatens a person in a public place in an obviously offensive manner; or

"(5) makes unreasonable noise in a public place, or in or near a private residence that he has no right to occupy; or

"(6) fights with another in a public place; or

"(7) enters upon the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in such dwelling; or

"(8) discharges a firearm in a public place; or

"(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm.

"(b) It is a defense to prosecution under Subsection (a)(4) of this section that the actor had significant provocation for his abusive or threatening conduct.

"(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

"(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor.

"Section 42.02. RIOT

"(a) For the purpose of this section, 'riot' means the assemblage of seven or more persons resulting in conduct which:

"(1) creates an immediate danger of damage to property or injury to persons;

"(2) substantially obstructs law enforcement or other

governmental functions or services; or

"(3) by force, threat of force, or physical action, deprives any person or disturbs any person in the enjoyment of a legal right.

"(b) A person commits an offense if he knowingly participates in a riot.

"(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) of this section, the actor retired from the assembly.

"(d) It is no defense to prosecution under this section that another who was party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

"(e) Except as provided in Subsection (f) of this section, an offense under this section is a Class B misdemeanor.

"(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot, if the offense was:

"(1) in the furtherance of the purpose of the assembly; or

"(2) an offense which should have been anticipated as a result of the assembly.

"Section 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY

"(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

"(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance or exit to which the public or a substantial group of the public has access; or any other place used for the passage of persons, vehicles or conveyances, regardless of the means of creating such obstruction, and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

"(2) disobeys a reasonable request or order to move issued by a person the actor knows or is informed 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 any of those areas mentioned in Subsection (1) hereof; 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.

"Section 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION

"(a) If conduct that would otherwise violate Section 42.01 (a)(5) of this code or Section 42.03 of this code consists of speech or other communication, or of gathering with others to hear or observe such speech or communication, or of gathering

with others to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions, the actor must be ordered to move, disperse or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which such sections seek to protect.

"(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

"(c) It is a defense to prosecution under Section 42.01 (a)(5) and Section 42.03 of this code:

"(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

"(3) that an order, if given, was promptly obeyed.

"Section 42.05. DISRUPTING MEETING OR PROCESSION

"(a) A person commits an offense if, intending to prevent or disrupt a lawful meeting, procession or gathering, he obstructs or interferes with the meeting, procession or gathering by physical action or verbal utterance.

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

"Section 42.06. FALSE ALARM OR REPORT

"(a) A person commits an offense if he intentionally initiates, repeats, circulates or broadcasts in any manner a report of a present, past, or impending bombing, fire, offense,

or other emergency, knowing that the report is false or baseless and intending, knowing or having good cause to believe:

"(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 mode of conveyance.

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

"Section 42.07. HARASSMENT

"(a) A person commits an offense if he intentionally:

"(1) communicates by telephone or in writing in vulgar, profane, obscene or indecent language or in a coarse and offensive manner, and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient, or intends to annoy or alarm 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 intends to annoy or alarm the recipient; or

"(3) places one or more telephone calls anonymously, or at an unreasonable 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 or intends to annoy or alarm the recipient.

"(b) For purposes of Subsection (a)(3) of this section, 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 B misdemeanor.

"Section 42.08. PUBLIC INTOXICATION

"(a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

"(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

"(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

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

"Section 42.09. DESECRATION OF VENERATED OBJECT

"(a) A person commits an offense if he intentionally or knowingly desecrates:

"(1) a public monument; or

"(2) a place of worship or burial; or

"(3) a state or national flag.

"(b) For purposes of this section, 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor

knows will seriously offend one or more persons likely to observe or discover his action.

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

"Section 42.10. ABUSE OF CORPSE

"(a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

"(1) disinters, disturbs, removes, dissects, in whole or in part, carries away or treats in a seriously offensive manner any human corpse; or

"(2) conceals a human corpse knowing it to be illegally disinterred; or

"(3) sells or buys any human corpse or in any way traffics in the same; or

"(4) transmits or conveys, or procures to be transmitted or conveyed, any human corpse to any place outside the state.

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

"Section 42.11. CRUELTY TO ANIMALS

"(a) A person 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 authority or the owner's effective consent; or

"(6) causes one animal to fight with another.

"(b) It is a defense to prosecution under this section that the actor is engaged in bona fide experimentation for scientific research.

"(c) For purposes of this section, 'animal' means a domesticated living creature and wild living creature previously captured. 'Animal' does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

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

"Section 42.12. SHOOTING ON PUBLIC ROAD

"(a) A person commits an offense if he intentionally or knowingly shoots or discharges any gun, pistol or firearm on, along or across any public road in this state.

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

"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.

1 43.05. Compelling Prostitution.
2 43.06. Accomplice Witness: Testimony and Immunity.
3 "SUBCHAPTER B. OBSCENITY
4 43.21. Subchapter Definitions.
5 43.22. Obscene Display or Distribution.
6 43.23. Commercial Obscenity.
7 43.24. Sale, Distribution, or Display of Harmful Material to
8 Minor.
9 "SUBCHAPTER A. PROSTITUTION
10 "Section 43.01. SUBCHAPTER DEFINITIONS
11 "In this subchapter, unless the context requires a different
12 definition:
13 "(1) 'Deviate sexual intercourse' means any contact
14 between the genitals of one person and the mouth or anus of another
15 person.
16 "(2) 'Prostitution' means the offense defined in
17 Section 43.02 of this code.
18 "(3) 'Sexual contact' means any touching of the anus
19 or any part of the genitals of another person, or of the breast
20 of a female 10 years or older, with intent to arouse or gratify
21 the sexual desire of any person.
22 "(4) 'Sexual conduct' includes deviate sexual
23 intercourse, sexual contact, and sexual intercourse.
24 "(5) 'Sexual intercourse' means any penetration of
25 the female sex organ by the male sex organ.
26 "Section 43.02. PROSTITUTION

"(a) A person commits an offense 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) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

"(c) An offense under this section is a Class C misdemeanor, unless the actor has previously been convicted under this section, in which event it is a Class B misdemeanor.

"Section 43.03. PROMOTION OF PROSTITUTION

"(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he 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.

"Section 43.04. AGGRAVATED PROMOTION OF PROSTITUTION

"(a) A person commits an offense if he owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

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

"Section 43.05. COMPELLING PROSTITUTION

"(a) A person commits an offense if:

"(1) he causes another by force, threat, or fraud

to commit prostitution; or

"(2) he causes by any means a person younger than 17 years to commit prostitution.

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

"Section 43.06. 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.

"SUBCHAPTER B. OBSCENITY

"Section 43.21. SUBCHAPTER DEFINITIONS

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

"(1) 'Obscene' means having as a whole a dominant theme:

"(A) that appeals to a prurient interest in

1 sex, nudity, or excretion; and
2 "(B) that is patently offensive because it
3 affronts contemporary community standards relating to the
4 description or representation of sex, nudity, or excretion; and
5 "(C) that is utterly without redeeming social
6 value.
7 "(2) 'Material' means any book, magazine, newspaper,
8 or other printed or written material or any picture, drawing,
9 photograph, motion picture, or other pictorial representation or
10 any statue or other figure, or any recording, transcription, or
11 mechanical, chemical or electrical reproduction, or any other
12 articles, equipment, or machines.
13 "(3) 'Prurient interest' means a shameful or morbid
14 interest in nudity, sex, or excretion, which goes substantially
15 beyond customary limits of candor in description or representation
16 of such matters. If it appears from the character of the material
17 or the circumstances of its dissemination that the subject matter
18 is designed for a specially susceptible audience, the appeal of
19 the subject matter shall be judged with reference to such audience.
20 "(4) 'Distribute' means to transfer possession of,
21 whether with or without consideration.
22 "(5) 'Commercially distribute' means to transfer
23 possession of, for valuable consideration.
24 "Section 43.22. OBSCENE DISPLAY OR DISTRIBUTION
25 "(a) A person commits an offense if he intentionally or
26 knowingly displays or distributes obscene photographs, drawings,

or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display.

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

"Section 43.23. COMMERCIAL OBSCENITY

"(a) A person commits an offense if, knowing the content of the material:

"(1) he sells, commercially distributes, commercially exhibits or possesses for sale, commercial distribution or commercial exhibition any obscene material; 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; or

"(3) he hires, employs or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subsections (1) and (2) of this section.

"(b) It is an affirmative defense to prosecution under this section that the obscene material is possessed by a person having scientific, educational, governmental, or other similar justification.

"(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

"Section 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR

"(a) For purposes of this section:

"(1) 'Minor' means an individual younger than 17 years.

"(2) 'Harmful material' means material whose dominant theme taken as a whole:

"(A) appeals to the prurient interest of a minor in sex, nudity or excretion; 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) A person commits an offense if, knowing that the material is harmful:

"(1) and knowing the person is a minor, he sells, distributes, or exhibits or possesses for sale, distribution or exhibition to a minor harmful material; or

"(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

"(3) he hires, employs or uses a minor to do or assist in doing or accomplishing or assist in accomplishing any of the acts prohibited in Subsections (b)(1) and (b)(2) of this section.

"(c) It is a defense to prosecution under this section that:

"(1) the sale, distribution, or exhibition is by a

1 person having scientific, educational, governmental, or other
2 similar justification; or
3 "(2) that the sale, distribution or exhibition was
4 to a minor who was accompanied by a consenting parent, guardian,
5 or spouse.
6 "(d) An offense under this section is a Class A misdemeanor
7 unless committed under Subsection (b)(3) of this section in which
8 event it shall be a felony of the third degree.
9 "TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS
10 "CHAPTER 46. WEAPONS
11 "Section
12 46.01. Chapter Definitions.
13 46.02. Unlawful Carrying Weapons.
14 46.03. Places Weapons Prohibited.
15 46.04. Non-Applicable.
16 46.05. Unlawful Possession of Firearm by Felon.
17 46.06. Prohibited Weapons.
18 46.07. Unlawful Transfer of Firearm.
19 46.08. Interstate Purchase.
20 "Section 46.01. CHAPTER DEFINITIONS
21 "In this chapter, unless the context requires a different
22 definition:
23 "(1) 'Club' means an instrument that is specially
24 designed, made, or adapted for the purpose of inflicting serious
25 bodily injury or death by striking a person with the instrument,
26 and includes but is not limited to the following:

"(A) blackjack;

"(B) night stick;

"(C) mace;

"(D) tomahawk.

"(2) 'Explosive weapon' means any explosive, incendiary, or poison gas bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, and includes a device principally designed, made, or adapted for delivery or shooting an explosive weapon.

"(3) 'Firearm' means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. 'Firearm' does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

"(4) 'Firearm silencer' means any device designed, made, or adapted to muffle the report of a firearm.

"(5) 'Handgun' means any firearm that is designed, made, or adapted to be fired with one hand.

"(6) 'Illegal knife' means any:

"(A) knife with a blade over five and one-half inches;

"(B) throw-blade knife;

"(C) dagger, including but not limited to a

dirk, stiletto, and poniard;

"(D) bowie knife;

"(E) sword; or

"(F) spear.

"(7) 'Knife' means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

"(8) 'Knuckles' means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

"(9) 'Machine gun' means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

"(10) 'Short-barrel firearm' means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

"(11) 'Switchblade knife' means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and:

"(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.

"Section 46.02. UNLAWFUL CARRYING WEAPONS

"(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or a club.

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

"(c) An offense under this section is a felony of the third degree if it occurred on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

"Section 46.03. PLACES WEAPONS PROHIBITED

"(a) A person commits an offense if, with a firearm, he intentionally, knowingly, or recklessly goes:

"(1) on the campus of any school or educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution;

"(2) to any public gathering where five or more persons are assembled; or

"(3) on the premises of any polling place on the day of an election.

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

"Section 46.04. NON-APPLICABLE

"The provisions of Sections 46.02 and 46.03 of this code shall not apply to a person:

"(1) in the actual discharge of his official duty

as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

"(2) on his own premises or place of business; or

"(3) traveling.

"Section 46.05. UNLAWFUL POSSESSION OF FIREARM BY FELON

"(a) A person who has been convicted of a felony involving any act of violence or threatened violence to a person or property, commits an offense if he possesses a firearm away from the premises where he lives.

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

"Section 46.06. PROHIBITED WEAPONS

"(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

"(1) an explosive weapon;

"(2) a machine gun;

"(3) a short-barrel firearm;

"(4) a firearm silencer;

"(5) a switchblade knife; or

"(6) knuckles.

"(b) It is a defense to prosecution under this section that the actor's conduct was incident to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

"(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant

to the National Firearms Act, as amended.

"(d) An offense under this section is a felony of the second degree, unless committed under Subsection (a)(5) or (a)(6) of this section, in which event it is a felony of the third degree.

"Section 46.07. UNLAWFUL TRANSFER OF FIREARM

"(a) A person commits an offense if:

"(1) he sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

"(2) he intentionally or knowingly sells, rents, leases, loans, or gives or offers to sell, rent, lease, loan, or give to any child under the age of 18 any firearm; or

"(3) he intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

"(b) For purposes of this section, 'intoxicated' means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

"(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

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

"Section 46.08. INTERSTATE PURCHASE

"A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922 (b)(3)(A), Public Law 90-618, 90th Congress.

"CHAPTER 47. GAMBLING

"Section

47.01. Chapter Definitions.
47.02. Gambling.
47.03. Gambling Promotion.
47.04. Keeping a Gambling Place.
47.05. Communicating Gambling Information.
47.06. Possession of Gambling Device or Equipment.
47.07. Possession of Gambling Paraphernalia.
47.08. Evidence.
47.09. Testimonial Immunity.

"Section 47.01. CHAPTER DEFINITIONS

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

"(1) 'Bet' means an agreement that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

"(A) contracts of indemnity of guaranty, or life, health, property, or accident insurance; or

"(B) an offer of a prize, award, or compensation

to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in such contest.

"(2) 'Gambling place' means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, the receiving, holding, recording, or forwarding of bets or offers to bet, or the conducting of a lottery or the playing of gambling devices.

"(3) 'Gambling device' means any mechanical contrivance which for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, and whether or not the prize is automatically paid by the contrivance.

"(4) 'Altered gambling equipment' means any contrivance which has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered and designed to enhance the actor's chances of winning.

"(5) 'Gambling paraphernalia' means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy or similar game.

"(6) 'Lottery' means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, or policy game, or by some other name.

"(7) 'Private place' means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

"(8) 'Thing of value' means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

"Section 47.02. GAMBLING

"(a) A person commits an offense if he:

"(1) makes a bet upon the partial or final result of any game or contest or upon the performance of any participant in such game or contest; or

"(2) makes a bet upon the result of any political nomination, appointment, or election or upon the degree of success of any nominee, appointee, or candidate; or

"(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

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

"(1) the actor engaged in gambling in a private place;

"(2) no person received an economic benefit other than personal winnings; and

"(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

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

"Section 47.03. GAMBLING PROMOTION

"(a) A person commits an offense if he intentionally or knowingly does any of the following acts:

"(1) operates or participates in the earnings of a gambling place; or

"(2) receives, records, or forwards a bet or offer to bet; or

"(3) for gain, becomes a custodian of anything of value bet or offered to be bet; or

"(4) sells chances upon the partial or final result of or upon the margin of victory in any game or contest or upon the performance of any participant in any game or contest or upon the result of any political nomination, appointment, or election or upon the degree of success of any nominee, appointee, or candidate; or

"(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed

to serve as evidence of participation in any lottery.

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

"Section 47.04. KEEPING A GAMBLING PLACE

"(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or who rents or lets any such property with a view or expectation that it be so used.

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

"(1) the actor engaged in gambling in a private place;

"(2) no person received an economic benefit other than personal winnings; and

"(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

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

"Section 47.05. COMMUNICATING GAMBLING INFORMATION

"(a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or who knowingly provides, installs or maintains equipment for the transmission or receipt of such information.

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

"Section 47.06. POSSESSION OF GAMBLING DEVICE OR EQUIPMENT

"(a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

"(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment which he knows is designed for gambling purposes or any equipment which he knows is designed as a subassembly or essential part of such device.

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

"Section 47.07. POSSESSION OF GAMBLING PARAPHERNALIA

"(a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially or possesses gambling paraphernalia.

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

"Section 47.08. EVIDENCE

"(a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia shall constitute prima facie evidence that the actor did so knowingly and with the intent to further gambling.

"(b) In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

"Section 47.09. TESTIMONIAL IMMUNITY

"(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

"(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

"(c) For purposes of this section, 'adjudicatory proceeding' means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

"(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense."

Sec. 2. CONFORMING AMENDMENTS. (a). The following articles of the Code of Criminal Procedure, 1965, as amended, are amended to read as follows:

"Article 14.03. AUTHORITY OF PEACE OFFICERS

"(a) Any peace officer may arrest, without warrant, persons found in suspicious places and under circumstances which reasonably

show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws.

"(b) A peace officer may arrest a person without a warrant if he has been informed by a reliable person that another is committing an offense under Chapter 46 (Weapons) of the Penal Code.

"Article 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.

"Article 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, other than when required to

give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding $500, and to imprisonment not exceeding six months.

"Article 21.14. PERJURY AND AGGRAVATED PERJURY [~~false swearing~~]

"An indictment for perjury or aggravated perjury [~~false swearing~~] 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 [~~officer~~] by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury [~~false swearing~~] is assigned.

"Article 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 [~~negligently~~] or with criminal negligence in the commission [~~committing~~] 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 [~~negligently~~] or with criminal negligence.

"Article 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, as defined in Chapter 3 of the Penal Code.

"(b) A count may contain as many separate paragraphs charging the same offense as 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. 21.24 May contain several counts but only one offense~~

"~~An indictment, information or complaint may contain as many counts charging the same offense as the attorney who prepares it, acting in good faith, may think necessary to insert, but may not charge more than one offense. An indictment or information shall be sufficient if any one of its counts be sufficient.~~]

"Article 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 [~~sane~~], and is

uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

"Article 27.02. DEFENDANT'S PLEADINGS

"The pleadings and motions of the defendant shall be [~~On the part of the defendant, the following are the only pleadings~~]:

"(1) A [~~The~~] motion to set aside or an exception to an [~~the~~] indictment or information for some matter of form or substance;

"(2) A special plea [~~setting forth one or more facts as cause why the defendant ought not be be tried upon the accusation presented against him~~] as provided in Article 27.05 of this code;

"[~~(3) An exception to the indictment or information for some matter of form or substance.~~]

"(3) [~~4.~~] A plea of guilty;

"(4) [~~5.~~] A plea of not guilty;

"(5) A plea of nolo contendere, the legal effect of which [~~such plea~~] shall be the same as that of a plea of guilty, except that such [~~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;

"(6) An [~~Defendant's~~] application for probation, if any [~~and~~];

"(7) An [~~Defendant's~~] election, if any, to have the jury assess the punishment if he is found guilty; and [~~.~~]

"(8) Any other motions or pleadings that are by law

permitted to be filed.

"Article 27.05. DEFENDANT'S SPECIAL PLEA [~~Special pleas for defendant~~]

"A defendant's [~~The~~] only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode, that was or should have been consolidated into one trial, and that the former prosecution [~~pleas which can be heard for the defendant are~~]:

"(1) resulted in acquittal;

"[~~1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense; and~~]

"(2) resulted in conviction;

"[~~2. That he has been before acquitted of the accusation against him, in a court of competent jurisdiction, whether the acquittal was regular or irregular.~~]

"(3) was improperly terminated; 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.

"Article 28.01. PRE-TRIAL

"Section 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the

State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

"(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

"(2) Pleadings of the defendant;

"(3) Special pleas, if any;

"(4) Exceptions to the form or substance of the indictment or information;

"(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

"(6) Motions to suppress evidence—When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

"(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury; [~~and~~]

"(8) Discovery; [.] and

"(9) Entrapment.

"Section 2. When a criminal case is set for such pre-trial hearing, the defendant shall have five days after notice of setting in which to file his motions, pleadings and exceptions; and any such preliminary matters not raised and filed within the time allowed will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

"Section 3. The notice mentioned in Section 2 above shall be sufficient if given in any one of the following ways:

"(1) By announcement made by the court in open court in the presence of the defendant or his attorney of record;

"(2) By personal service upon the defendant or his attorney of record;

"(3) By mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing. If the defendant has no attorney of record such notice shall be addressed to defendant at the address shown on his bond, if the bond shows such an address, and if not, it may be addressed to one of the sureties on his bond. If the envelope containing the notice is properly addressed, stamped and mailed, the state will not be required to show that it was received.

"Article 29.01. BY OPERATION OF LAW

"Criminal actions are continued by operation of law if:

"1. The individual defendant [~~the accused~~] has not been arrested;

"2. A defendant corporation or association has not been served with summons; or [~~if~~]

"3. There is not sufficient time for trial at that term of court.

"Article 36.03. WITNESSES 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.

"Article 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.

"Article 37.07. VERDICT MUST BE GENERAL; SEPARATE HEARING ON PROPER PUNISHMENT

"Section 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

"(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

"(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

"Section 2. [~~Alternate procedure~~] (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal [~~corporation~~] court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed.

"(b) If a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that [~~(1) in capital cases~~

~~where the state has made it known in writing prior to trial that it will seek the death penalty,~~] (1) [~~(2)~~] in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) [~~(3)~~] in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

"(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

"Section 3. Evidence of prior criminal record in all criminal cases after a finding of guilty

"(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

"(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same

as are applicable on the issue of guilt or innocence.

"(c) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

"(d) When the judge assesses the punishment, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

"(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

"Article 37.08. CONVICTION OF LESSER INCLUDED OFFENSE [~~Offenses of different degree~~]

"In a prosecution for an offense with lesser included [~~including lower~~] offenses, the jury may find the defendant not guilty of the greater [~~higher~~] offense, but guilty of any lesser included [~~lower~~] offense [~~included~~].

"Article 37.09. LESSER INCLUDED OFFENSE [~~Offenses consisting of degrees~~]

"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.

"[~~The following offenses include different degrees:~~

"~~1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder;~~

"~~2. An assault with intent to commit any felony, which includes all assaults of an inferior degree;~~

"~~3. Maiming, which includes aggravated and simple assault and battery;~~

"~~4. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary;~~

"~~5. Riot, which includes unlawful assembly;~~

"~~6. Kidnapping or abduction, which includes false imprisonment; and~~

"~~7. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt~~

~~is a violation of the penal law.~~]

"Article 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 [~~such~~] 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 16 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. [~~an offense defined in Chapter Three of the Penal Code of Texas pertaining to wife or child desertion or wilful failure or refusal to support his or her minor children.~~]

"Article 38.18. PERJURY AND AGGRAVATED PERJURY [~~false swearing~~]

"(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) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

"[~~In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court.~~]

"Article 40.03. GROUNDS FOR NEW TRIAL IN FELONY

"New trials, in cases of felony, shall be granted the defendant for the following causes, and for no other:

"(1) Where the defendant is an individual and has been tried in his absence, except as otherwise provided in this Code, 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 evidence [~~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 evidence [~~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 consumption [~~drinking~~] of alcoholic beverage [~~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 the 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; and

"(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.

"Article 43.01. DISCHARGING JUDGMENT FOR FINE

"(a) When the [~~judgment and~~] sentence against an individual [~~a~~] 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.

"Article 43.03. PAYMENT OF FINE [~~Pay or jail~~]

"(a) If a defendant is sentenced to pay [~~When a judgment and sentence have been rendered against a defendant for~~] a fine or [~~and~~] 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.

"Article 45.32. THE ONLY SPECIAL PLEA

"The only special pleas allowed are those defined in Article 27.05 of this code [~~is that of former acquittal or conviction for the same offense~~].

"Article 49.16. COMMITMENT OF HOMICIDE SUSPECT [~~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 [~~an accomplice or accessory~~] 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.

"Article 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 [~~an accomplice or accessory~~] 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.

"Article 50.03. VERDICT IN FIRE INQUEST

"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, [~~either as principal or accessory,~~] and in what manner. If such a jury is unable to so ascertain, it shall find and certify accordingly."

(b). Chapter 12, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"CHAPTER TWELVE

"LIMITATION

"Article 12.01. FELONIES [~~Treason; theft or conversion by executor, administrator or guardian; forgery~~]

"Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

"(1) no limitation: murder and manslaughter; [~~An~~

~~indictment for the following offenses may be presented within ten years from the time of the commission of the offense, and not afterward:~~

"~~1. treason;~~]

"(2) ten years from the date of the commission of the offense:

"(A) theft [~~or conversion~~] 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) [~~3~~] 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.

"[~~Article 12.02. Rape~~

"~~An indictment for rape may be presented within one year, and not afterward.~~

"~~Article 12.03. Theft, etc., five years~~

"~~An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward.~~

"~~Article 12.04. Other felonies~~

"~~An indictment for any other felony may be presented within three years from the commission of the offense, and not afterward; except murder, for which an indictment may be presented at any time.~~]

"Article 12.02. MISDEMEANORS [~~12.05 Misdemeanors, two years~~]

"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.

"Article 12.03. AGGRAVATED OFFENSES, ATTEMPT, CONSPIRACY, SOLICITATION

"(a) The limitation period for criminal attempt is the same as that of the offense attempted.

"(b) The limitation period for criminal conspiracy is the same as that of the most serious offense which is the object of the conspiracy.

"(c) The limitation period for criminal solicitation is the same as that of the felony solicited.

"(d) Any offense which bears the title 'aggravated' shall carry the same limitation period as the primary crime.

"Article 12.04. [~~12.06~~] 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.

"Article 12.05. [~~12.07~~] ABSENCE FROM STATE AND TIME OF PENDENCY OF INDICTMENT, ETC., NOT COMPUTED

"(a) [~~1.~~] The time during which the accused is absent from the state shall not be computed in the period of limitation.

"(b) [~~2.~~] The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

"(c) [~~3.~~] 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.

"Article 12.06. [~~12.08~~] 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.

"Article 12.07. [~~12.09~~] AN INFORMATION IS 'PRESENTED,' WHEN

"An information is considered as 'presented,' when it has been filed by the proper officer in the proper court."

(c). Chapter 13, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"CHAPTER THIRTEEN

"VENUE

"Article 13.01. OFFENSES [~~not~~] COMMITTED OUTSIDE THIS [~~in the~~] STATE

"[~~Prosecutions for~~] Offenses committed wholly or in part outside [~~without, and made punishable by law within~~] this state, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted [~~begun and carried on~~] in any county in which the offender is found, or in any county in which an element of the offense occurs.

"Article 13.02. FORGERY

"Forgery may be prosecuted in any county where the writing [~~written instrument~~] 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. In addition, a [~~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.

"[~~Article 13.03. Counterfeiting~~

"~~Counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed.~~]

"Article 13.03. [~~13.04~~] PERJURY [~~Perjury and false~~

~~swearing~~]

"Perjury and aggravated perjury [~~false-swearing~~] may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

"Article 13.04. [~~13.05~~] ON THE BOUNDARY OF [~~two~~] COUNTIES

"An offense committed on the boundaries [~~boundary~~] of [~~any~~] two or more counties, or within four hundred yards thereof, may be prosecuted and punished in any one of such counties except that any offense committed on the premises of any airport operated jointly by two municipalities shall be prosecuted in the county in which the offense is committed [~~either-county~~].

"Article 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.

"[~~Article-13.06--Person-dying-out-of-the-State-~~

~~"If-any-person,-being-at-the-time-within-this-State,-shall inflict-upon-another,-also-within-this-State-an-injury-of-which such-person-afterward-dies-without-the-limits-of-this-State,-the person-so-offending-shall-be-liable-to-prosecution-in-the-county where-the-injury-was-inflicted.~~

~~"Article-13.07--Person-within-the-State-inflicting-injury on-another-out-of-the-State~~

~~"If-a-person,-being-at-the-time-within-this-State,-shall~~

~~inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted.~~

"~~Article 13.08. Person without the State inflicting an injury on one within~~

"~~If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.~~]

"Article 13.06. [~~13.09~~] 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.

"Article 13.07. [~~13.10~~] 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.

"[~~Article 13.11. 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.~~]

"Article 13.08. [~~13.12~~] THEFT

"Where property is stolen in one county and removed [~~carried off~~] by the offender to another [~~,~~] county, the offender [~~he~~] may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same [~~carried it~~].

"Article 13.09. [~~13.13~~] HINDERING SECURED CREDITORS [~~Mortgaged property~~]

"If secured [~~When mortgaged~~] 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 [~~lien on it~~] is filed [~~registered~~].

"[~~Article 13.14. Accomplices and accessories to theft~~

"~~Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice, or accessory to the offense.~~

"~~Article 13.15. Receiving and concealing stolen property~~

"~~Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender.~~

"~~Article 13.16. By commissioner of deeds~~

"~~Offenses-committed-out-of-this-State-by-a-commissioner-of deeds,-or-other-officer-acting-under-the-authority-of-this-State, may-be-prosecuted-in-any-county-of-this-State.~~]

"Article 13.10. PERSON ACTING UNDER AUTHORITY OF THIS STATE

"An offense committed outside this state by any officer acting under the authority of this state, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted in the county of his residence or, if a non-resident of this state, in Travis County.

"Article 13.11. [~~13.17~~] 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.

"[~~Article-13.18--Embezzlement~~

"~~Embezzlement-may-be-prosecuted-in-any-county-in-which-the offender-may-have-taken-or-received-the-property,-or-through-or into-which-he-may-have-undertaken-to-transport-it.~~]

"Article 13.12. [~~13.19~~] FALSE IMPRISONMENT, KIDNAPPING [~~and-abduction~~]

"Venue for false imprisonment and [~~,~~] kidnapping [~~and abduction~~] is in [~~belongs~~] either [~~to~~] the county in which the offense was committed, or in [~~to~~] any county through, into or out of which the person falsely imprisoned or [~~,~~] kidnapped [~~or-taken in-such-manner-as-to-constitute-abduction~~] may have been taken

[~~carried~~].

"Article 13.13. [~~13.20~~] CONSPIRACY

"Criminal conspiracy may be prosecuted in the county where the conspiracy was entered into, [~~or~~] in the county where the conspiracy [~~same~~] was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If a conspiracy was entered into outside 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. [~~; and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.~~]

"Article 13.14. [~~13.21~~] 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.

"Article 13.15. [~~13.22~~] 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 [~~his~~] court be in session, but the grand jury has been discharged, he shall immediately recall such [~~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.

"Article 13.16. CRIMINAL NONSUPPORT

"Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

"[~~Article 13.23. Conviction or acquittal in another State~~

"~~When an act has been committed out of this State by an inhabitant thereof, and such act is an offense by the laws of this State, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this State.~~

"~~Article 13.24 Jurisdiction in different counties~~

"~~Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county.~~]

"Article 13.17. [~~13.25~~] PROOF OF VENUE

"In all cases mentioned in this chapter, the indictment or information, or any pleading [~~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 by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue [~~jurisdiction~~].

"Article 13.18. [~~13.26~~] OTHER OFFENSES

"If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

"Article 13.19. WHERE VENUE CANNOT BE DETERMINED

"If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides, in the county in which he is apprehended, or in the county to which he is extradited."

(d). The Code of Criminal Procedure, 1965, as amended, is amended by adding a new chapter entitled Chapter 17A, to read as follows:

"CHAPTER SEVENTEEN-A

"CORPORATIONS AND ASSOCIATIONS

Art.

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

"Article 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 government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

"(3) 'High managerial agent' means:

"(A) an officer of a corporation or association;

"(B) a partner in a partnership; or

"(C) an agent of a corporation or association who has duties of such responsibility that his conduct may reasonably be assumed to represent the policy of the corporation or association.

"(4) 'Person,' 'he,' and 'him' include corporation and association.

"Article 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.

"Article 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 20 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 30 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.

"Article 17A.04. SERVICE ON CORPORATION

"(a) Except as provided in Paragraph (d) of this article, 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) of this article, 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) of this article together with the return receipt.

"(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

"Article 17A.05. SERVICE ON ASSOCIATION

"(a) Except as provided in Paragraph (b) of this article, 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.

"Article 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 10 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) 10 full days must elapse after the day of appearance before the corporation or association may be tried.

"Article 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.

"Article 17A.08. PROBATION

"The benefits of the adult probation laws shall not be available to corporations and associations.

"Article 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."

(e). Chapter 18, Code of Criminal Procedure, 1925, as amended, is amended to read as follows:

"CHAPTER EIGHTEEN

"SEARCH WARRANTS

Art.

18.01. Search Warrant

18.02. Grounds for Issuance

18.03. Search Warrant May Order Arrest

18.04. Contents of Warrant

18.05. Warrants for Fire Marshals and Health Officers

18.06. Execution of Warrants

18.07. Days Allowed for Warrant to Run

18.08. Power of Officer Executing Warrant

18.09. Shall Seize Accused and Property

18.10. How Return Made

18.11. Custody of Property Found

18.12. Magistrate Shall Investigate

1 18.13. Shall Discharge Defendant
2 18.14. Examining Trial
3 18.15. Certify Record to Proper Court
4 18.16. Preventing Consequences of Theft
5 18.17. Disposition of Abandoned or Unclaimed Property
6 18.18. Disposition of Gambling Paraphernalia, Prohibited Weapon,
7 Criminal Instrument
8 18.19. Disposition of Certain Weapons
9 "Article 18.01. SEARCH WARRANT
10 "(a) A 'search warrant' is a written order, issued by a
11 magistrate, and directed to a peace officer, commanding him to
12 search for any property or thing, and to seize the same and bring
13 it before such magistrate.
14 "(b) No search warrant shall issue for any purpose in this
15 state unless sufficient facts are first presented to satisfy the
16 issuing magistrate that probable cause does in fact exist for its
17 issuance. A sworn affidavit setting forth substantial facts
18 establishing probable cause shall be filed in every instance in
19 which a search warrant is requested.
20 "Article 18.02. GROUNDS FOR ISSUANCE
21 "A search warrant may be issued to search for and seize:
22 "(1) Property acquired by theft or in any other
23 manner which makes its acquisition a penal offense;
24 "(2) Property specially designed, made or adapted
25 for or commonly used in the commission of an offense;
26 "(3) Arms and munitions kept or prepared for the

purpose of insurrection or riot;

"(4) Weapons prohibited by the Penal Code;

"(5) Gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

"(6) Obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

"(7) Drugs kept, prepared or manufactured in violation of the laws of this state;

"(8) Any property the possession of which is prohibited by law.

"Article 18.03. SEARCH WARRANT MAY ORDER ARREST

"If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

"Article 18.04. CONTENTS OF WARRANT

"A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

"(1) that it run in the name of 'The State of Texas;'

"(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place or thing to be searched;

"(3) that it command any peace officer of the proper county to search forthwith the person, place or thing named; and

"(4) that it be dated and signed by the magistrate.

"Article 18.05. WARRANTS FOR FIRE MARSHALS AND HEALTH OFFICERS

"(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.

"(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation is present in the premises sought to be inspected.

"(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

"(1) the age and general condition of the premises;

"(2) previous violations or hazards found present in the premises;

"(3) the type of premises;

"(4) the purposes for which the premises are used; and

"(5) the presence of hazards or violations in, and the general condition of, premises near the premises sought to be inspected.

"Article 18.06. EXECUTION OF WARRANTS

"(a) Any peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

"(b) The officer shall, upon going to the place ordered to be searched or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of or is an inmate of the place or who has possession of the property described in the warrant.

"Article 18.07. DAYS ALLOWED FOR WARRANT TO RUN

"The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this chapter shall endorse on such search warrant the date and hour of the issuance of the same.

"Article 18.08. 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.

"Article 18.09. SHALL SEIZE ACCUSED AND PROPERTY

"When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate.

"Article 18.10. HOW RETURN MADE

"Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed and shall likewise deliver to the magistrate an inventory of the property taken in his possession under the warrant.

"Article 18.11. CUSTODY OF PROPERTY FOUND

"When a warrant has been issued to search a suspected place and there be found any property as alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

"Article 18.12. MAGISTRATE SHALL INVESTIGATE

"The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

"Article 18.13. 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 for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

"Article 18.14. EXAMINING TRIAL

"The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

"Article 18.15. CERTIFY RECORD TO PROPER COURT

"The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

"Article 18.16. PREVENTING CONSEQUENCES OF THEFT

"All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

"Article 18.17. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY

"(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no

purchasing agent, then such property shall be sold by the sheriff of the county.

"(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(d) The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of such sale in a newspaper of general circulation in the county

where the sale is to take place, stating the description of the property, the names of the owner if known and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer such property for sale.

"(e) The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court, the county treasurer shall pay the owner such funds as were paid into the treasury of the county as proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.

"Article 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA, PROHIBITED WEAPON, CRIMINAL INSTRUMENT

"(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, or an offense involving a prohibited weapon, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, 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 gambling device or equipment, altered gambling equipment or gambling paraphernalia, 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 gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, or criminal instrument seized must appear before the magistrate on the 20th 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 gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, 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) of this article.

"(g) For purposes of this article:

"(1) 'criminal instrument' has the meaning defined in the Penal Code;

"(2) 'gambling device or equipment, altered gambling equipment or gambling paraphernalia' has the meaning defined in the Penal Code;

"(3) 'prohibited weapon' has the meaning defined in

the Penal Code.

"Article 18.19. 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 Chapter 46 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 Chapter 46, in which event Article 18.18 of this code applies; or

"(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

"(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same 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 court in which he was convicted. If the weapon is not requested within 60 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 Chapter 46 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 60 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 previously convicted under Penal Code Chapter 46; or

"(3) the weapon is one defined as a prohibited weapon under Penal Code Chapter 46.

"(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 Chapter 46, 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.

"[~~Article 18.011. Warrants for fire marshals and health officers~~

"~~(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.~~

"~~(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to~~

~~believe that a fire or health hazard or violation is present in the premises sought to be inspected.~~

"~~(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:~~

"~~(1) the age and general condition of the premises;~~

"~~(2) previous violations or hazards found present in the premises;~~

"~~(3) the type of premises;~~

"~~(4) the purposes for which the premises are used; and~~

"~~(5) the presence of hazards or violations in, and the general condition of, premises near the premises sought to be inspected.~~

"~~Article 18.01 Search Warrant~~

"~~A "search warrant" is a written order, issued by a magistrate, and directed to a peace officer, commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense.~~

"~~No search warrant shall issue for any purpose in this state unless a sworn complaint therefor shall first be filed with the issuing magistrate setting forth sufficient facts to satisfy the magistrate that probable cause does in fact exist for its issuance.~~

"~~Article 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 implements are kept for use in forging or counterfeiting;~~

"~~4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot; and~~

"~~5. To seize and bring before a magistrate any such property, implements, arms, and munitions.~~

"~~Article 18.03 Its object~~

"~~A warrant to search for and seize stolen property is designed as a means of obtaining possession of the property for the purpose of restoring it to the true owner, and detecting any person guilty of stealing or concealing it.~~

"~~Article 18.04 Stolen~~

"~~The word "stolen", as used in this title, is intended to embrace also the acquisition of property by any means made penal by the law of the state.~~

"~~Article 18.05 For property not stolen~~

"~~When it is alleged that the property was acquired other than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant.~~

"~~Article 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 was acquired in any manner in violation of any provision of the Penal Code.~~

~~"Article 18.07 When place is known~~

~~"A warrant to search for and seize property alleged to have been stolen and concealed at a particular place may be issued by a magistrate, whenever written sworn complaint is made to such magistrate, setting forth:~~

~~"1. The name of the person accused of having stolen or concealed the property; or if his name be unknown, giving a description of the accused, or stating that the person who stole or concealed the property is unknown;~~

~~"2. The kind and value of the property alleged to be stolen or concealed;~~

~~"3. The place where it is alleged to be concealed; and~~

~~"4. The time, as near as may be, when the property is alleged to have been stolen.~~

~~"Article 18.08 General application~~

~~"A warrant to discover and seize property alleged to have been stolen or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever written sworn complaint is made setting forth:~~

~~"1. The name of the person suspected of being the thief,~~

~~or an accurate description of him, if his name be unknown, or that the thief is unknown;~~

~~"2. An accurate description of the property, and its probable value;~~

~~"3. The time, as near as may be, when the property is supposed to have been stolen;~~

~~"4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief; and~~

~~"5. Such other facts as may be required by Article 18.01 to establish probable cause.~~

~~"Article 18.09 Application to search other places~~

~~"A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:~~

~~"1. A description of the place suspected;~~

~~"2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept;~~

~~"3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of anyone;~~

~~"4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth; and~~

"~~5. Such other facts as may be required by Article 18.01 to establish probable cause.~~

"~~Article 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, counterfeiting 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 accomplice or accessory to any offense above enumerated.~~

"~~Article 18.11 Search warrant may order arrest~~

"~~The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the magistrate the person accused of having stolen or concealed the property.~~

"~~Article 18.12 To seize property~~

"~~A search warrant to seize property stolen and concealed shall be deemed sufficient if it contains the following requisites:~~

"~~1. That it run in the name of "The State of Texas";~~

"~~2. That it describe the property alleged to be stolen or concealed and the place where it is alleged to be concealed, and order the same to be brought before the magistrate;~~

~~"3. That it name the person accused of having stolen or concealed the property; or if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the magistrate, or state that the person who stole or concealed the property is unknown; and~~

~~"4. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.~~

~~"Article 18.13 To search suspected place~~

~~"A warrant to search a suspected place shall be sufficient if it contains the following requisites:~~

~~"1. That it run in the name of "The State of Texas";~~

~~"2. That it describe with accuracy the place suspected;~~

~~"3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed;~~

~~"4. That it name the person accused of having charge of the suspected place, if there be any such person, or if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate; and~~

~~"5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county.~~

~~"Article 18.14 Warrant executed without delay~~

"~~Any peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.~~

"~~Article 18.15 Days allowed for warrant to run~~

"~~The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this Chapter shall endorse on such search warrant the date and hour of the issuance of the same.~~

"~~Article 18.16 Officer to give notice of purpose~~

"~~The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of, the place, or who has possession of the property described in the warrant.~~

"~~Article 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. If he is resisted in the execution of the warrant, he may use such force as is necessary to overcome the resistance, but no greater.~~

"~~Article 18.18 When officer may enter by force~~

"~~In the execution of a search warrant, the officer may break down a door or a window of any house which he is ordered to search,~~

~~if he cannot effect an entrance by other less violent means; but when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the penal law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same.~~

~~"Article 18.19 Shall seize accused and property~~

~~"When the property, implements, arms or munitions which the officer is directed to search for and seize are found, he shall take possession of the same, and carry them before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and immediately take such person before the magistrate.~~

~~"Article 18.20 Receipt for property~~

~~"An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken.~~

~~"Article 18.21 How return made~~

~~"Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the magistrate an inventory of the property, implements, arms or munitions taken in his possession under the warrant.~~

~~"Article 18.22 Preventing consequences of theft~~

~~"All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and~~

~~bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.~~

~~"Article 18.23 Disposition of stolen property~~

~~"When property is taken under any provision of this title and delivered to a magistrate, he shall, if it appear that the same was acquired in violation of the penal law, dispose of it according to the rules prescribed in this code with reference to the disposition of stolen property.~~

~~"Article 18.24 Custody of property found~~

~~"When a warrant has been issued to search a suspected place, and there be found any such implements, arms, munitions or intoxicating liquors, etc., as are alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.~~

~~"Article 18.25 Magistrate shall investigate~~

~~"The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.~~

~~"Article 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, counterfeiting or burglary. In such case, the implements shall be kept by the sheriff subject to the order of the proper court.~~

"~~Article 18.27 Schedule~~

"~~The officer who seizes any property under a search warrant shall furnish the magistrate to whom he returns the warrant with a certified schedule of the articles so seized.~~

"~~Article 18.28 Examining trial~~

"~~The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.~~

"~~Article 18.29 Certify record to proper court~~

"~~The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.~~

"~~Article 18.30 Disposition of abandoned or unclaimed property~~

"~~(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by~~

~~a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no purchasing agent then such property shall be sold by the sheriff of the county.~~

"~~(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.~~

"~~(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale after deducting the reasonable expense of keeping such property and the costs of sale, placed in the county treasury.~~

"~~(d) The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owners if known and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient he need not sell such property but may decline such bid and reoffer such property for sale.~~

"~~(e) The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court, the county treasurer shall pay the owner such funds as were paid into the treasury of the county as proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.~~]"

(f). The Revised Civil Statutes of Texas, 1925, as amended, are amended by adding a new article to read as follows:

"Article 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."

(g). Article 907, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 907. PROTECTING COMMERCE

"If at any time the movement of commerce by common carriers of this State or any of them is interfered with in violation of any of the provisions of Chapter 42 of the Penal Code [~~Chapter 10, Title 14 of the Penal Code~~], and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order to prevent such interference [~~in order that the movement of commerce may not be interfered with~~], forthwith issue his proclamation declaring such conditions to exist and describing the area thus affected. [~~Each article of said Title of the Penal Code is made a part hereof.~~]"

(h). Article 1011, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 1011. POWERS

"The city [~~council~~], county, or other governing body, shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not inconsistent with [~~contrary to~~] 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 $200 [~~one hundred dollars~~]."

(i). Section 8, Article 5765, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Discharge of Duty.

"Section 8. Members of the State Military Forces ordered into active service of the State by proper authority shall not be liable civilly [~~or criminally~~] for any act or acts done by them while in the discharge of their duty. When a suit [~~or proceeding~~] 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 [~~prosecuting or~~] instituting the suit [~~or proceeding~~] 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 or judgment rendered against him, the defendant shall recover treble costs."

(j). Article 4664, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 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 of any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, [~~gambling, or for the purpose of prostitution,~~] is hereby declared to be a common nuisance. Any person who knowingly maintains [~~or assists in maintaining~~] such a place is guilty of maintaining a nuisance."

(k). Article 4667, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 4667. INJUNCTIONS TO ABATE PUBLIC NUISANCES [~~Gaming and disorderly 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 consist a public nuisance and shall be enjoined at the suit of either the State or any citizen thereof:

"(1) For gambling, gambling promotion, or communicating gambling information prohibited by law; [~~For gaming or keeping or exhibiting games prohibited by law.~~]

"(2) For the promotion or aggravated promotion of prostitution, or compelling prostitution; [~~keeping, being~~

~~interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.~~]

"(3) For the commercial manufacturing, commercial distribution, or commercial exhibition of obscene material; [~~carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.~~]

"(4) For the commercial exhibition of live dances or exhibition which depicts real or simulated sexual intercourse or deviate sexual intercourse;

"(5) [~~4.~~] For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by law [~~the Penal Code~~].

"(b) Any person who may use or be about to use, or who may be a party to [~~aid or abet another in~~] 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 of 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."

(l). Article 7.01, Texas Business Corporation Act, as amended, is amended by adding Sections F and G to read as follows:

"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 7.02 of this Act does not apply to Section F of this article."

(m). Article 8.16, Texas Business Corporation Act, as amended, is amended by adding Sections F and G to read as follows:

"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."

(n). Article 7.01 of the Texas Non-Profit Business Corporation Act, as amended (Article 1396-7.01, Vernon's Texas Civil Statutes), is amended by adding Sections F and G to read as follows:

"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 of this Act does not apply to Section F of this article."

(o). Article 8.15 of the Texas Non-Profit Business Corporation Act, as amended (Article 1963-7.01, Vernon's Texas Civil Statutes), is amended by adding Sections F and G to read as follows:

"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 of this Act does not apply to Section F of this article."

Sec. 3. REPEALER. (a) The following laws are repealed:

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"(b) The following articles of the Code of Criminal Procedure, 1965, as amended, are repealed: 2.24, 7.11, 7.12, 15.27, 22.01a, and 38.07.

"(c) Chapter 5, Code of Criminal Procedure, 1965, as amended (Articles 5.01 through 5.07), is repealed.

"(d) The following sections of the Business & Commerce Code, as amended, are repealed: 17.09, 17.10, 17.28, 25.01, 25.02, 25.03, and 35.19.

"(e) Article 6876, Revised Civil Statutes of Texas, 1925, is repealed.

"(f) Chapter 2, Section 14, Acts of the 61st Legislature, 2nd Called Session, 1969, as amended (Article 6145--9, Section

14, Vernon's Texas Civil Statutes), is repealed."

Sec. 4. DISPOSITION OF UNREPEALED ARTICLES. (a) The purpose of this section is to provide for transfer of articles of the Penal Code of Texas, 1925, as amended, which are not repealed by this Act to the civil statutes or other appropriate places within the framework of Texas statute law, without reenactment and without altering the meaning or effect of the unrepealed articles, so that when this Act takes effect there will be only one Texas Penal Code without the confusion that would result if remnants of the old penal code were allowed to continue to exist in that form in the statute books.

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

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

"(d) Nothing in this section or done under its authority

alters the meaning or effect of any statute of this state."

Sec. 5. EFFECTIVE DATE. This Act takes effect on January 1, 1974.

Sec. 6. SAVING PROVISIONS. (a) Except as provided in Subsections (b) and (c) of this section, 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 repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct which was an offense under the laws repealed by this Act and which does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act, for conduct constituting an offense under laws repealed by this Act, is valid and unaffected by this Act. For the purpose of this section, 'conviction' means a finding of guilt in a court of competent jurisdiction and it is no consequence that such conviction is not a final conviction.

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

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

Sec. 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars 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 this rule is hereby suspended.

FORM A

COMMITTEE REPORT

Date 5/16/73

HONORABLE PRICE DANIEL, JR.
Speaker of the House of Representatives.

Sir:

We, your Committee on Criminal Jurisprudence, to whom was referred S.B. No. 34, have had the same under consideration and beg to report back with recommendation that it (do) pass.

~~The Committee recommends that this measure be considered for the Local and Consent Calendar.~~

House sponsor of Senate measure: Nugent

The measure was reported from Committee by the following record vote:

12 ayes
1 nays
0 present, not voting
10 absent

Bob Hendricks
Chairman.

This measure proposes new law.

SB 54-63rd

BILL ANALYSIS

Background Information:

The proposed recodification of the Texas Penal Code is the result of long term study by the Texas District and County Attorneys Association and the Texas Criminal Defense Lawyers Association, and the State Bar of Texas. It is felt that the recodification is necessary to make the Code more workable and to incorporate amendments to and judicial decisions under the present Code.

What the Bill Proposes to Do:

To recodify the penal laws of the State of Texas.

Section By Section Analysis:

Since this bill is a recodification of existing law, a section by section analysis is not in order (Rule VIII, Sec. 26).

SUMMARY OF COMMITTEE ACTION:

The Committee on Criminal Jurisprudence ~~posted~~ gave notice in Accordance with Rule VIII, Section 13, and considered S.B. No. 34 in a ~~public hearing~~/formal meeting on May 16, 1973. ~~The bill was referred to Sub-committee and reported back Favorably to the full committee with amendment(s) on _____, 1973.~~ The Committee voted on May 16, 1973 by a record vote of 12 ayes and 1 nays, to report the bill back to the House Favorably/~~Unfavorably~~ with the recommendation that it do/~~do not~~ pass, ~~as amended~~.

The bill proposes new law by ~~adding~~ amending and recodifying the Penal Code

MAY 21 1973

MOTION TO RECONSIDER THE VOTE BY WHICH [illegible] MOTION TO RECONSIDER THE VOTE BY WHICH [illegible] WAS ADOPTED / ~~PASSED~~ AND TO TABLE THE MOTION TO RECONSIDER ~~PREVAILED PASSED BY A~~ [illegible] VOTE OF ADOPTED / ~~PASSED~~ AND TO TABLE THE MOTION TO RECONSIDER ~~PREVAILED PASSED BY A~~ [illegible] VOTE OF ~~AYES AND~~ NAYES ~~AYES AND~~ NAYES

CHIEF CLERK HOUSE OF REPRESENTATIVES

CHIEF CLERK HOUSE OF REPRESENTATIVES

~~H. B. No. 514~~

AMENDMENT NO. [illegible] BY NABERS

~~COMMITTEE AMENDMENT NO. 1~~

Amend S.B. No. ~~514~~ 34 by striking all below the enacting clause and substituting the following:

Section 1. ADOPTION OF CODE. A new penal code is adopted to read as follows:

TITLE 1. INTRODUCTORY PROVISIONS

Chapter 1. General Provisions 3

2. Burden of Proof 11

3. Multiple Prosecutions 14

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

Chapter 6. Culpability Generally 15

7. Criminal Responsibility for Conduct of Another 18

8. General Defenses to Criminal Responsibility 22

9. Justification Excluding Criminal Responsibility 26

TITLE 3. PUNISHMENTS

Chapter 12. Punishments 40

TITLE 4. INCHOATE OFFENSES

Chapter 15. Preparatory Offenses 47

16. Criminal Instruments

TITLE 5. OFFENSES AGAINST THE PERSON

Chapter 19. Criminal Homicide 51

20. Kidnapping and False Imprisonment 54

21. Sexual Offenses 56

22. Assaultive Offenses 63

TITLE 6. OFFENSES AGAINST THE FAMILY

MAY 21 1973

DATE

63R3153 JRP-F READ AND ADOPTED as amended

Dorothy Hallman

Chief Clerk

House of Representatives

Chapter 25. Offenses Against the Family 67

TITLE 7. OFFENSES AGAINST PROPERTY

Chapter 28. Arson, Criminal Mischief, and Other Property Damage or Destruction 71

29. Robbery 75

30. Burglary and Criminal Trespass 76

31. Theft 79

32. Fraud 87

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

Chapter 36. Bribery and Corrupt Influence 107

37. Perjury and Other Falsification 114

38. Obstructing Governmental Operation 118

39. Abuse of Office 125

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

Chapter 42. Disorderly Conduct and Related Offenses 126

43. Public Indecency 134

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

Chapter 46. Weapons 140A

47. Gambling 141

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section

1.01. Short Title. 3

1.02. Objectives of Code. 3

1.03. Effect of Code. 4

1.04. Territorial Jurisdiction. 4

1.05. Construction of Code. 6
1.06. Computation of Age. 6
1.07. Definitions. 6
1.08. Preemption. 10

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This code shall be known and may be cited as the Penal Code.

Sec. 1.02. OBJECTIVES OF CODE. The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

(1) to insure the public safety through:

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

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

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

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

(3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of

differences in rehabilitation possibilities among individual offenders;

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

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

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

Sec. 1.03. EFFECT OF CODE. (a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

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

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

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

1 responsible if:

2 (1) either the conduct or a result that is an element

3 of the offense occurs inside this state;

4 (2) the conduct outside this state constitutes an

5 attempt to commit an offense inside this state;

6 (3) the conduct outside this state constitutes a

7 conspiracy to commit an offense inside this state, and an act in

8 furtherance of the conspiracy occurs inside this state; or

9 (4) the conduct inside this state constitutes an

10 attempt, solicitation, or conspiracy to commit, or establishes

11 criminal responsibility for the commission of, an offense in

12 another jurisdiction that is also an offense under the laws of

13 this state.

14 (b) If the offense is criminal homicide, a "result" is

15 either the physical impact causing death or the death itself.

16 If the body of a criminal homicide victim is found in this state,

17 it is presumed that the death occurred in this state. If death

18 alone is the basis for jurisdiction, it is a defense to the

19 exercise of jurisdiction by this state that the conduct that

20 constitutes the offense is not made criminal in the jurisdiction

21 where the conduct occurred.

22 (c) An offense based on an omission to perform a duty

23 imposed on an actor by a statute of this state is committed inside

24 this state regardless of the location of the actor at the time

25 of the offense.

26 (d) This state includes the land and water (and the air

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

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

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

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

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.

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

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

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

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

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

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

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

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

(11) "Deadly weapon" means:

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

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

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

(A) induced by ~~deception or coercion;~~ force, threat, or fraud;

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

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

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

(13) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

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

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

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

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

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

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

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

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

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

(22) "Oath" includes affirmation.

(23) "Omission" means failure to act.

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

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

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

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

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

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

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

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

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person

who is authorized by law or private written agreement to hear or determine a cause or controversy; or

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

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

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

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

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

(33) "Rule" includes regulation.

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

(35) "Swear" includes affirm.

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

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

Sec. 1.08. PREEMPTION. No governmental subdivision or agency may enact or enforce a law that makes any conduct covered

by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

CHAPTER 2. BURDEN OF PROOF

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CHAPTER 2. BURDEN OF PROOF

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Sec. 2.02. EXCEPTION. (a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . . ."

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

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

Sec. 2.03. DEFENSE. (a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . . ."

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

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

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

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

Sec. 2.04. AFFIRMATIVE DEFENSE. (a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution . . . ."

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

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

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

Sec. 2.05. PRESUMPTION. When this code or another penal

law establishes a presumption with respect to any fact, it has the following consequences:

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

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

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

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

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

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the element to which the presumption applies, or any other element of the offense charged, it shall acquit the defendant and say by its verdict not guilty.

Sec. 2.06. PRIMA FACIE CASE. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual

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instructions on burden of proof.

CHAPTER 3. MULTIPLE PROSECUTIONS

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CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property).

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property).

Sec. 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS. (a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

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

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

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

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 of this code, the defendant shall have a right to a severance of the offenses.

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

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Section

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

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION. (a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession, in violation of a statute that provides that the conduct is an offense.

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

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

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b) of this section, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

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

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

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

(1) intentional;

(2) knowing;

(3) reckless;

(4) criminal negligence.

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

Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES. (a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

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

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

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross

deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Sec. 6.04. CAUSATION: CONDUCT AND RESULTS. (a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

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

(1) a different offense was committed; or

(2) a different person or property was injured, harmed, or otherwise affected.

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. Defenses Excluded.

[Sections 7.04-7.20 reserved for expansion]

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

7.21. Definitions.

7.22. Criminal Responsibility of Corporation or Association.

7.23. Criminal Responsibility of Person for Conduct in Behalf of

Corporation or Association.

7.24. Defense to Criminal Responsibility of Corporation or Association.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

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

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

Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER. (a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission,

he fails to make a reasonable effort to prevent commission of the offense.

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

Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

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

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

[Sections 7.04-7.20 reserved for expansion]

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

Sec. 7.21. DEFINITIONS. In this subchapter:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "High managerial agent" means:

(A) a partner in a partnership;

(B) an officer of a corporation or association;

(C) an agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. (a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

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

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

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

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

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

(2) a high managerial agent acting in behalf of the

corporation or association and within the scope of his office or employment.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION OR ASSOCIATION. (a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

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

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

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. (a) It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

(b) Subsection (a) of this section does not apply if it is plainly inconsistent with the legislative purpose expressed in the law defining the particular offense.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

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CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.01. INSANITY. (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated.

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

Sec. 8.02. MISTAKE OF FACT. (a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

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

Sec. 8.03. MISTAKE OF LAW. (a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

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

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

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

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

Sec. 8.04. INTOXICATION. (a) Voluntary intoxication does not constitute a defense to the commission of crime.

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

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

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

Sec. 8.05. DURESS. (a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

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

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

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

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

Sec. 8.06. ENTRAPMENT. (a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

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

instructions from such agents.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY. (a) Except as provided by Subsection (c) of this section, a person may not be prosecuted or convicted for any offense that he committed when younger than 15 years.

(b) Except as provided by Subsection (c) of this section, a person who is younger than 17 years may not be prosecuted or convicted for any offense, unless the juvenile court waives jurisdiction and certifies him for criminal prosecution.

(c) Subsections (a) and (b) of this section shall not apply to prosecutions for:

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

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

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

(d) No person who has been adjudged a delinquent child may be convicted of any offense alleged in the petition to adjudge him a delinquent child or any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the juvenile proceeding.

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

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

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CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

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

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

Sec. 9.02. JUSTIFICATION AS A DEFENSE. It is a defense to prosecution that the conduct in question 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. THREATS AS JUSTIFIABLE FORCE. The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

Sec. 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON. Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

Sec. 9.06. CIVIL REMEDIES UNAFFECTED. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Sections 9.07-9.20 reserved for expansion]

SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c) of this section, conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to

protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

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

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

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

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

Sec. 9.22. NECESSITY. Conduct is justified if:

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

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

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

[Sections 9.23-9.30 reserved for expansion]

SUBCHAPTER C. PROTECTION OF PERSONS

1 Sec. 9.31. SELF-DEFENSE. (a) Except as provided in
2 Subsection (b) of this section, a person is justified in using
3 force against another when and to the degree he reasonably believes
4 the force is immediately necessary to protect himself against the
5 other's use or attempted use of unlawful force.
6 (b) The use of force against another is not justified:
7 (1) in response to verbal provocation alone;
8 (2) to resist an arrest or search that the actor
9 knows is being made by a peace officer, or by a person acting in
10 a peace officer's presence and at his direction, even though the
11 arrest or search is unlawful, unless the resistance is justified
12 under Subsection (c) of this section;
13 (3) if the actor consented to the exact force used
14 or attempted by the other; or
15 (4) if the actor provoked the other's use or attempted
16 use of unlawful force, unless:
17 (A) the actor abandons the encounter, or clearly
18 communicates to the other his intent to do so reasonably believing
19 he cannot safely abandon the encounter; and
20 (B) the other nevertheless continues or attempts
21 to use unlawful force against the actor.
22 (c) The use of force to resist an arrest or search is
23 justified:
24 (1) if, before the actor offers any resistance, the
25 peace officer (or person acting at his direction) uses or attempts
26 to use greater force than necessary to make the arrest or search;
27 and

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

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

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

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

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

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

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

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

Sec. 9.33. DEFENSE OF THIRD PERSON. A person is justified in using force or deadly force against another to protect a third person if:

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

reasonably believes to be threatening the third person he seeks to protect; and

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

Sec. 9.34. PROTECTION OF LIFE OR HEALTH. (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

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

[Sections 9.35-9.40 reserved for expansion]

SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

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

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

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

Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is justified in using deadly force against another to protect land or tangible, movable property:

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

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

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

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

(3) he reasonably believes that:

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

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

Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if,

under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 of this code in using force or deadly force to protect his own land or property and:

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

(2) the actor reasonably believes that:

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

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

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

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 through 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

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

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

[Sections 9.45-9.50 reserved for expansion]

SUBCHAPTER E. LAW ENFORCEMENT

Sec. 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

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

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

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an

arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) of this section and:

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

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

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

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

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

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

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as

conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

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

Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a penal institution or a peace officer is justified in using any force, including deadly force, that he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

[Sections 9.53-9.60 reserved for expansion]

SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT-CHILD. (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

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

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 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

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TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure, 1965.

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

with this chapter.

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

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

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors;

(2) Class B misdemeanors;

(3) Class C misdemeanors.

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

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

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

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

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

[Sections 12.05-12.20 reserved for expansion]

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

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

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and imprisonment.

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

(1) a fine not to exceed $1,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $200.

[Sections 12.24-12.30 reserved for expansion]

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. FIRST-DEGREE FELONY PUNISHMENT. An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for ~~a~~ any term of not more than 99 years or less than ~~5~~ five years.

Sec. 12.32. SECOND-DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for ~~a~~ any term of not more than 20 years or less than ~~2~~ two years.

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

Sec. 12.33. THIRD-DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for ~~a~~ any term of not more than 10 years or less than ~~2~~ two years.

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

[Sections 12.34-12.40 reserved for expansion]

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE. For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if confinement in a penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. (a) If it be shown on the trial of a third-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a second-degree felony.

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

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

(d) If it be shown on the trial of any felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by confinement in the Texas Department of Corrections for life.

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. (a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for ~~a~~ any term of not more than one year or less than 90 days.

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

Sec. 12.44. REDUCTION OF THIRD-DEGREE FELONY TO MISDEMEANOR. (a) A court may set aside a judgment or verdict of guilty of a

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

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

Sec. 12.45. ADMISSION OF UNADJUDICATED OFFENSE. (a) An individual may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

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

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

[Sections 12.46-12.50 reserved for expansion]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS. (a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine

only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

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

(1) $10,000 if the offense is a felony of any category;

(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) of this section, 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.

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.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

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

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

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

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

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

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

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

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

acquitted;

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

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

(5) the object offense was actually committed.

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

Sec. 15.03. CRIMINAL SOLICITATION. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

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

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

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

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

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

(4) the felony solicited was actually committed.

(d) An offense under this section is:

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

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

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

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

took further affirmative action that prevented the commission of the object offense.

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

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

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

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

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.

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

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

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

(b) For purposes of this section, "criminal instrument" means anything that is specially designed, made, or adapted for the commission of an offense.

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

TITLE 5. OFFENSES AGAINST THE PERSON

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TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.01. TYPES OF CRIMINAL HOMICIDE. (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an

individual.

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

Sec. 19.02. MURDER. (a) A person commits an offense if he:

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

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

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

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

Sec. 19.03. VOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

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

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

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

Sec. 19.04. INVOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he:

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

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

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

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

Sec. 19.05. EVIDENCE. In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

Sec. 19.06. CRIMINALLY NEGLIGENT HOMICIDE. (a) A person

commits an offense if he causes the death of an individual by criminal negligence.

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

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

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CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Sec. 20.01. DEFINITIONS. In this chapter:

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

(A) force, intimidation, or deception; or

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

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

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

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor,

sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

Sec. 20.02. FALSE IMPRISONMENT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

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

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

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

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

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

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

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

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

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

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

(3) the actor's sole intent was to assume lawful

control of the victim.

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

Sec. 20.04. AGGRAVATED KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

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

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

(5) terrorize him or a third person; or

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

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

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21.12. General Provisions.

CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

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

(2) "Sexual contact" means any touching of the anus or 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.

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

Sec. 21.02. RAPE. (a) A person commits an offense 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:

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

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

resolution;

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

(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;

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

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

Sec. 21.03. AGGRAVATED RAPE. (a) A person commits an offense if he commits rape as defined in Section 21.02 of this code or rape of a child as defined in Section 21.09 of this code and he:

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

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

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

Sec. 21.04. SEXUAL ABUSE. (a) A person commits an offense if, without the other person's consent and with intent to arouse or gratify the sexual desire of any person, the actor:

(1) 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) 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:

(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;

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

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

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

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

is occurring;

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

Sec. 21.05. AGGRAVATED SEXUAL ABUSE. (a) A person commits an offense if he commits sexual abuse as defined in Section 21.04 of this code or sexual abuse of a child as defined in Section 21.10 of this code and he:

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

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

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

Sec. 21.06. HOMOSEXUAL CONDUCT. (a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

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

Sec. 21.07. PUBLIC LEWDNESS. (a) A person commits an

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

(1) an act of sexual intercourse;

(2) an act of deviate sexual intercourse;

(3) an act of sexual contact;

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

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

Sec. 21.08. INDECENT EXPOSURE. (a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

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

Sec. 21.09. RAPE OF A CHILD. (a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 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.

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

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

degree.

Sec. 21.10. SEXUAL ABUSE OF A CHILD. (a) A person commits an offense 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 the child is younger than 17 years.

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

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

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

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

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

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

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

(1) sexual intercourse;

(2) deviate sexual intercourse;

(3) sexual contact; or

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

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

Sec. 21.12. GENERAL PROVISIONS. The exclusion of conduct with a spouse from the definitions of offenses in Sections 21.02 through 21.05 of this code (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.

CHAPTER 22. ASSAULTIVE OFFENSES

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CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. (a) A person commits an offense if he:

(1) intentionally, knowingly, or recklessly causes

bodily injury to another; or

(2) intentionally or knowingly threatens another with imminent bodily injury; or

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

(b) An offense under this section is a Class A misdemeanor unless the offense is committed under Subsection (a)(2) or (a)(3) of this section, in which event it is a Class C misdemeanor.

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

(1) causes serious bodily injury to another;

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

(3) uses a deadly weapon.

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

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

Sec. 22.03. DEADLY ASSAULT ON A PEACE OFFICER. (a) A person commits an offense if, with a firearm or a prohibited weapon, he intentionally or knowingly causes serious bodily injury to a peace officer in the lawful discharge of official duty where he knows or has been informed the person assaulted is a peace

officer.

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

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

Sec. 22.04. INJURY TO A CHILD. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct that causes serious bodily injury, serious physical or mental deficiency or impairment, or deformity to a child who is 14 years of age or younger.

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

Sec. 22.05. RECKLESS CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

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

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

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Reckless Conduct) of this code if:

(1) the conduct did not threaten or inflict serious bodily injury; or

(2) the victim knew the conduct was a risk of:

(A) his occupation;

(B) recognized medical treatment; or

(C) a scientific experiment conducted by recognized methods.

Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

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

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

(b) An offense under this section is a Class B misdemeanor unless it is committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

Sec. 22.08. AIDING SUICIDE. (a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a felony of the third degree.

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

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TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. (a) An individual commits an offense if:

(1) he is legally married and he:

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

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

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

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

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

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

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

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

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

Sec. 25.02. INCEST. (a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

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

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

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

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

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

(b) For purposes of this section:

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

person with intent to arouse or gratify the sexual desire of any person.

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

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

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

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

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

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

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

Sec. 25.04. ENTICING A CHILD. (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

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

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if he intentionally or knowingly fails to provide support that he can provide and that he was legally obligated to provide for his children younger than 18 years, or for his spouse who is in needy circumstances.

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

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

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

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

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

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

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

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

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

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

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

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28.01. Definitions. 71

28.02. Arson. 72

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TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected

with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

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

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

Sec. 28.02. ARSON. (a) A person commits an offense 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) An offense under this section is a felony of the second degree, unless any bodily injury less than death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

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

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or

substantial inconvenience to the owner or a third person.

(b) An offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $5; or

(B) except as provided in Subdivision (4)(B) of this subsection, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is $5 or more but less than $20;

(3) a Class A misdemeanor if the amount of pecuniary loss is $20 or more but less than $200;

(4) a felony of the third degree if:

(A) the amount of pecuniary loss is $200 or more but less than $10,000; ~~or~~

(B) regardless of the amount of pecuniary loss, the actor causes impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service;

Insert here

(5) a felony of the second degree if the amount of the pecuniary loss is $10,000 or more.

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

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

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 fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) of this section, the amount of loss is deemed to be greater than $20 but less than $200.

3 (e) If the actor proves by a preponderance of the evidence
4 that he gave consideration for or had a legal interest in the
5 property involved, the value of the interest so proven shall be
6 deducted from:
7 (1) the amount of pecuniary loss if the property is
8 destroyed; or
9 (2) the amount of pecuniary loss to the extent of
10 an amount equal to the ratio the value of the interest bears to
11 the total value of the property, if the property is damaged.

9 Section
10 29.01. Definitions. 75
11 29.02. Robbery. 75
12 29.03. Aggravated Robbery. 76
13 Sec. 29.01. DEFINITIONS. In this chapter:
14 (1) "In the course of committing theft" means conduct
15 that occurs in an attempt to commit, during the commission, or
16 in immediate flight after the attempt or commission of theft.
17 (2) "Property" means:
18 (A) tangible or intangible personal property
19 including anything severed from land; or
20 (B) a document, including money, that represents
21 or embodies anything of value.
22 Sec. 29.02. ROBBERY. (a) A person commits an offense if,
23 in the course of committing theft as defined in Chapter 31 of
24 this code and with intent to obtain or maintain control of the
25 property, he:
26 (1) intentionally, knowingly, or recklessly causes
27 bodily injury to another; or

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

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

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and he:

(1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon.

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

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Section

30.01. Definitions.
30.02. Burglary.
30.03. Burglary of Coin-Operated Machines.
30.04. Burglary of Vehicles.
30.05. Criminal Trespass.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, he:

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

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

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

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

(1) any part of the body; or

(2) any physical object connected with the body.

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

(d) An offense under this section is a felony of the first degree if:

(1) the premises are a habitation; or

(2) any party to the offense is armed with explosives or a deadly weapon; or

(3) any party to the offense injures or attempts to

injure anyone in effecting entry or while in the building or in immediate flight from the building.

Sec. 30.03. BURGLARY OF COIN-OPERATED MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine or other coin-operated contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

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

Sec. 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

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

(1) any part of the body; or

(2) any physical object connected with the body.

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

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "entry" means the intrusion of the entire body; and

(2) "notice" means:

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

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

(C) signs posted to be reasonably likely to come to the attention of intruders.

(c) An offense under this section is a Class C misdemeanor unless it is committed in a habitation, in which event it is a Class A misdemeanor.

CHAPTER 31. THEFT

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~~31.09.~~ 31.10 Actor's Interest in Property. 87

CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. In this chapter:

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

(A) to commit an offense;

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

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

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

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

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

(2) "Deception" means:

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

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

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

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

or

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

(3) "Deprive" means:

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

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

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

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

(A) induced by deception or coercion;

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

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

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

(A) labor and professional service;

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

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

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

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

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 of this code constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Sec. 31.03. THEFT. (a) A person commits an offense 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 owner's effective consent; or

(2) the property is stolen and the actor obtains it

from another or exercises control over the property obtained by another knowing it was stolen.

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than $5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is $5 or more but less than $20; or

(B) the value of the property stolen is less than $5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is $20 or more but less than $200;

(4) a felony of the third degree if:

(A) the value of the property stolen is $200 or more but less than $10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value

of $10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than $200 and the defendant has been previously convicted two or more times of any grade of theft;

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

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token; or

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them.

(b) For purposes of this section, intent to avoid payment is presumed if the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $5;

(2) a Class B misdemeanor if the value of the service stolen is $5 or more but less than $20;

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret; or

(3) communicates or transmits a trade secret.

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

telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

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

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

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

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

Sec. 31.0~~6~~7. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

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

Sec. 31.0~~7~~8. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

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

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes

evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

Sec. 31.~~08~~9. AGGREGATION OF AMOUNTS INVOLVED IN THEFT. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 31.~~09~~10. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

CHAPTER 32. FRAUD

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CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

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

(2) "Property" means:

(A) real property;

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

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

(3) "Service" includes:

(A) labor and professional service;

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

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

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

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

Sec. 32.02. VALUE. (a) Subject to the additional criteria

of Subsections (b) and (c) of this section, value under this chapter is:

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

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD.

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Sections 32.04-32.20 are reserved for expansion]

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

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

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

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

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

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

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

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

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

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

(3) he possesses an object so made or altered, with

intent to sell, pass, or otherwise utter it; or

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

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

[Sections 32.23-32.30 are reserved for expansion]

SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD ABUSE. (a) For purposes of this section:

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

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

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

(b) A person commits an offense if:

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

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

(B) the card has expired or has been revoked

1 or cancelled;

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

5 (3) he receives property or service that he knows
6 has been obtained in violation of this section;

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

11 (5) he buys a credit card from a person who he knows
12 is not the issuer;

13 (6) not being the issuer, he sells a credit card;

14 (7) he uses or induces the cardholder to use the
15 cardholder's credit card to obtain property or service for the
16 actor's benefit for which the cardholder is financially unable
17 to pay;

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

21 (9) he possesses two or more incomplete credit cards
22 that have not been issued to him with intent to complete them
23 without the effective consent of the issuer. For purposes of
24 this subdivision, a credit card is incomplete if part of the
25 matter that an issuer requires to appear on the credit card before
26 it can be used (other than the signature of the cardholder) has
27 not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

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

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT. (a) For purposes of this section, "credit" includes:

(1) a loan of money;

(2) furnishing property or service on credit;

(3) extending the due date of an obligation;

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

(5) a line or letter of credit; and

(6) a credit card, as defined in Section 32.31 of this code (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

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

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or

lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

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

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

Sec. 32.34. FRAUD IN INSOLVENCY. (a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:

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

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

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

to the administration.

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

Sec. 32.35. RECEIVING DEPOSIT, PREMIUM, OR INVESTMENT IN FAILING FINANCIAL INSTITUTION. (a) A person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:

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

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

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

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

[Sections 32.36-32.40 reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of

insufficient funds is presumed (except in the case of a postdated check or order) if:

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

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

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

(1) the check or order;

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

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

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

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

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and

1 advertising, selling, and buying service or property.

2 (3) "Commodity" means any tangible or intangible

3 personal property. /105

4 (4) "Contest" includes sweepstake, puzzle, and game

5 of chance.

6 (5) "Deceptive sales contest" means a sales contest:

7 (A) that misrepresents the participant's chance

8 of winning a prize;

9 (B) that fails to disclose to participants on

10 a conspicuously displayed permanent poster (if the contest is

11 conducted by or through a retail outlet) or on each card game

12 piece, entry blank, or other paraphernalia required for

13 participation in the contest (if the contest is not conducted by

14 or through a retail outlet):

15 (i) the geographical area or number of

16 outlets in which the contest is to be conducted;

17 (ii) an accurate description of each type

18 of prize;

19 (iii) the minimum number and minimum amount

20 of cash prizes; and

21 (iv) the minimum number of each other type

22 of prize; or

23 (C) that is manipulated or rigged so that prizes

24 are given to predetermined persons or retail establishments. A

25 sales contest is not deceptive if the total value of prizes to

26 each retail outlet is in a uniform ratio to the number of game

27 pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit an offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

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

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

(4) selling an adulterated or mislabeled commodity;/107

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

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

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

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

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

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

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

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this/108

section:

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

(2) "Fiduciary" means:

(A) an agent or employee;

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

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

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

(b) A person who is a fiduciary commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit as consideration for:

(1) violating a duty to a beneficiary; or

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

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) of this section.

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

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) of this section.

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

(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class A misdemeanor if the value of the property misapplied is less than $200;

(2) a felony of the third degree if the value of the property is $200 or more but less than $10,000;

(3) a felony of the second degree if the value of the property is $10,000 or more.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION. (a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a felony of the third degree.

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or

availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

Sec. 32.48. ENDLESS CHAIN SCHEME. (a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person

introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

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TITLE 8. OFFENSES AGAINST THE STATE AND PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. DEFINITIONS. In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense;

(B) to inflict bodily injury on the person threatened or another;

(C) to accuse any person of any offense;

(D) to expose any person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Vote" means to cast a ballot in an election regulated by law.

Sec. 36.02. BRIBERY. (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on 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 an offense if he knowingly 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 an offense if he knowingly 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) An offense under this section is a felony of the third degree unless committed under Subsection (b) of this section, in which event it is a felony of the second degree.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

Sec. 36.04. IMPROPER INFLUENCE. (a) A person commits an

offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.05. TAMPERING WITH WITNESS. (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

(1) to testify falsely;

(2) to withhold any testimony, information, document, or thing;

(3) to elude legal process summoning him to testify or supply evidence; or

(4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in

Subsection (a) of this section.

(c) An offense under this section is a felony of the third degree.

Sec. 36.06. RETALIATION. (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, or informant.

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

Sec. 36.07. COMPENSATION FOR PAST OFFICIAL BEHAVIOR. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer any benefit on 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 intentionally or knowingly 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, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the

1 legislature or by an agency of the legislature commits an offense
2 if he solicits, accepts, or agrees to accept any benefit from a
3 person the public servant knows is interested in any matter pending
4 before or contemplated by the legislature or an agency of the
5 legislature.
6 (g) An offense under this section is a Class A misdemeanor.
7 Sec. 36.09. OFFERING GIFT TO PUBLIC SERVANT. (a) A person
8 commits an offense if he offers, confers, or agrees to confer any
9 benefit on a public servant that he knows the public servant is
10 prohibited by law from accepting.
11 (b) An offense under this section is a Class A misdemeanor.
12 Sec. 36.10. DEFENSES. (a) It is a defense to prosecution
13 under Section 36.07 (Compensation for Past Official Behavior),
14 36.08 (Gift to Public Servant), or 36.09 (Offering Gift to Public
15 Servant) of this code that the benefit involved was:
16 (1) a fee prescribed by law to be received by a
17 public servant or any other benefit to which the public servant
18 is lawfully entitled;
19 (2) a gift or other benefit conferred on account of
20 kinship or a personal, professional, or business relationship
21 independent of the official status of the recipient;
22 (3) a trivial benefit incidental to personal,
23 professional, or business contacts that involves no substantial
24 risk of undermining official impartiality; or
25 (4) a contribution made under the election laws for
26 the political campaign of an elective public servant when he is
27 a candidate for nomination or election to public office.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

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CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter: /126

(1) "Governmental record" means anything:

(A) belonging to, received by, or kept by government for information; or

(B) required by law to be kept by others for information of government.

(2) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(3) "Statement" means any representation of fact.

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's

meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made; and

(2) the statement is required or authorized by law to be made under oath.

(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02 of this code, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.

Sec. 37.04. MATERIALITY. (a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the actor retracted his false statement:

(1) before completion of the testimony at the official

proceeding; and

(2) before it became manifest that the falsity of the statement would be exposed.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 of this code or aggravated perjury under Section 37.03 of this code that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER. (a) A person commits an offense if he:

(1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or

(2) makes a report to a peace officer relating to

an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

(b) An offense under this section is a Class B misdemeanor.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a Class A misdemeanor.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

(b) It is an exception to the application of Subsection (a)(3) of this section that the governmental record is destroyed pursuant to legal authorization.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts. 124

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

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CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(5) "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly

subject to this chapter.

Sec. 38.02. FAILURE TO IDENTIFY AS WITNESS. (a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

(b) An offense under this section is a Class C misdemeanor.

Sec. 38.03. RESISTING ARREST OR SEARCH. (a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest or search of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

Sec. 38.04. EVADING ARREST. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting to arrest him.

(b) It is an exception to the application of this section that the attempted arrest is unlawful.

(c) An offense under this section is a Class B misdemeanor.

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION. (a) A person commits an offense if, with intent to hinder the arrest,

prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension. /129

(b) It is a defense to prosecution under Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor.

Sec. 38.06. COMPOUNDING. (a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 38.07. ESCAPE. (a) A person arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

(b) Except as provided in Subsections (c) and (d) of this section, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony; or

(2) is confined in a penal institution.

(d) An offense under this section is a felony of the second degree if the actor used or threatened to use a deadly weapon to effect his escape.

Sec. 38.08. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of an institution that is responsible for maintaining persons in custody commits an offense if he/128 intentionally, knowingly, or recklessly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

(1) an allegation or adjudication of delinquency; or

(2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if:

(1) the person in custody was under arrest for, charged with or convicted of a felony;

(2) the person in custody was confined in a penal institution;

(3) the actor used or threatened to use a deadly weapon to effect the escape; or

(4) the offense under Subsection (a) of this section was committed intentionally.

Sec. 38.09. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.07 (Escape) or 38.08 (Facilitating Escape) of this code that the custody was unlawful.

Sec. 38.10. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a penal institution, or provides an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

Sec. 38.11. BAIL JUMPING AND FAILURE TO APPEAR. (a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) This section does not apply to appearances incident to probation or parole.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required

is classified as a felony.

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain a benefit for himself or to harm another he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him employment to prosecute or defend a suit or to collect a claim.

(b) An offense under this section is a Class A misdemeanor.

Sec. 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

CHAPTER 39. ABUSE OF OFFICE

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CHAPTER 39. ABUSE OF OFFICE

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;

(2) commits an act under color of his office or employment that exceeds his official power;

(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;

(4) violates a law relating to his office or employment; or

(5) takes or misapplies any thing of value belonging to the government that may have come into his custody or possession by virtue of his employment, or secretes it with intent to take or misapply it, or pays or delivers it to any person knowing that such person is not entitled to receive it.

(b) For purposes of Subsection (a)(2) of this section, 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 Subsections (a)(1) through (a)(4) of this section is a Class A misdemeanor. An offense under Subsection (a)(5) of this section is a felony of the third degree.

Sec. 39.02. OFFICIAL OPPRESSION. (a) A public servant

acting under color of his office or employment commits an offense if he: 132

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under this section is a Class A misdemeanor.

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, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) speculates or aids another to speculate on the basis of the information.

(b) An offense under this section is a Class A misdemeanor.

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

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TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place or 134

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in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) discharges a firearm in a public place; ~~or~~

(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm; ;

(b) It is a defense to prosecution under Subsection (a)(4) of this section that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor.

"Sec. 42.02. RIOT. (a) For the purpose of this section, "riot" means the assemblage of 7 or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons; 136

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) of this section, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) of this section, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. (a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move

issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION. (a) If conduct that would otherwise violate Section 42.01 (a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) of this code consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the

violation.

(c) It is a defense to prosecution under Section 42.01 (a)(5) or 42.03 of this code:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

Sec. 42.05. DISRUPTING MEETING OR PROCESSION. (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

Sec. 42.06. FALSE ALARM OR REPORT. (a) A person commits an offense if he knowingly initiates, communicates, circulates, or broadcasts a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if he intentionally:

(1) communicates by telephone or in writing in vulgar, profane, obscene, or indecent language or in a coarse and offensive manner and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient;

(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 intends to annoy or alarm the recipient; or

(3) places one or more telephone calls anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient.

(b) For purposes of Subsection (a)(3) of this section, 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 B misdemeanor.

Sec. 42.08. PUBLIC INTOXICATION. (a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual

or others.

(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

(d) An offense under this section is a Class C misdemeanor.

Sec. 42.09. DESECRATION OF VENERATED OBJECT. (a) A person commits an offense if he intentionally or knowingly desecrates:

(1) a public monument;

(2) a place of worship or burial; or

(3) a state or national flag.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.

Sec. 42.10. ABUSE OF CORPSE. (a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

(1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;

(2) conceals a human corpse knowing it to be illegally disinterred;

(3) sells or buys a human corpse or in any way traffics in a human corpse; or

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.

(b) An offense under this section is a Class A misdemeanor.

Sec. 42.11. CRUELTY TO ANIMALS. (a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(d) An offense under this section is a Class A misdemeanor.

Sec. 42.12. SHOOTING ON PUBLIC ROAD. (a) A person commits an offense if he intentionally or knowingly shoots or discharges any gun, pistol, or firearm on, along, or across a public road.

(b) An offense under this section is a Class C misdemeanor.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

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CHAPTER 43. PUBLIC DECENCY

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. DEFINITIONS. In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 of this code.

(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) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct in return for a fee payable to the actor; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class C misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class B misdemeanor.

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he knowingly 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) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third

degree.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

Sec. 43.06. ACCOMPLICE WITNESS: TESTIMONY AND IMMUNITY. (a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Sections 43.07-43.20 reserved for expansion]

SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITIONS. In this subchapter:

(1) "Obscene" means having as a whole a dominant

theme that:

(A) appeals to a prurient interest in sex, nudity, or excretion;

(B) is patently offensive because it affronts contemporary community standards relating to the description or representation of sex, nudity, or excretion; and

(C) is utterly without redeeming social value.

(2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing, photograph, motion picture, or other pictorial representation; a statue or other figure; a recording, transcription, or mechanical, chemical, or electrical reproduction; or other article, equipment, or machine.

(3) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual

representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. COMMERCIAL OBSCENITY. (a) A person commits an offense if, knowing the content of the material:

(1) he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or commercial exhibition any obscene material;

(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; or

(3) he hires, employs, or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subdivisions (1) and (2) of this subsection.

(b) It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant

1 theme taken as a whole:

2 (A) appeals to the prurient interest of a minor

3 in sex, nudity, or excretion;

4 (B) is patently offensive to prevailing

5 standards in the adult community as a whole with respect to what

6 is suitable for minors; and

7 (C) is utterly without redeeming social value

8 for minors.

9 (b) A person commits an offense if, knowing that the

10 material is harmful:

11 (1) and knowing the person is a minor, he sells,

12 distributes, exhibits, or possesses for sale, distribution, or

13 exhibition to a minor harmful material;

14 (2) he displays harmful material and is reckless

15 about whether a minor is present who will be offended or alarmed

16 by the display; or

17 (3) he hires, employs, or uses a minor to do or

18 accomplish or assist in doing or accomplishing any of the acts

19 prohibited in Subsection (b)(1) or (b)(2) of this section.

20 (c) It is a defense to prosecution under this section that:

21 (1) the sale, distribution, or exhibition was by a

22 person having scientific, educational, governmental, or other

23 similar justification; or

24 (2) the sale, distribution, or exhibition was to a

25 minor who was accompanied by a consenting parent, guardian, or

26 spouse.

27 (d) An offense under this section is a Class A misdemeanor

unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

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CHAPTER 46. WEAPONS

Sec. 46.01. CHAPTER DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive, incendiary, or poison gas bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, and includes

1 a device principally designed, made, or adapted for delivery or
2 shooting an explosive weapon.
3 (3) "Firearm" means any device designed, made, or
4 adapted to expel a projectile through a barrel by using the energy
5 generated by an explosion or burning substance or any device
6 readily convertible to that use. Firearm does not include antique
7 or curio firearms that were manufactured prior to 1899 and that
8 may have, as an integral part, a folding knife blade or other
9 characteristics of weapons made illegal by this chapter.
10 (4) "Firearm silencer" means any device designed,
11 made, or adapted to muffle the report of a firearm.
12 (5) "Handgun" means any firearm that is designed,
13 made, or adapted to be fired with one hand.
14 (6) "Illegal knife" means a:
15 (A) knife with a blade over five and one-half
16 inches;
17 (B) throw-blade knife;
18 (C) dagger, including but not limited to a dirk,
19 stiletto, and poniard;
20 (D) bowie knife;
21 (E) sword; or
22 (F) spear.
23 (7) "Knife" means any bladed hand instrument that
24 is capable of inflicting serious bodily injury or death by cutting
25 or stabbing a person with the instrument.
26 (8) "Knuckles" means any instrument that consists
27 of finger rings or guards made of a hard substance and that is

designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

Sec. 46.03. NON-APPLICABLE. The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

(2) on his own premises or premises under his control;

(3) traveling; or

(4) engaging in lawful hunting or fishing or other lawful sporting activity.

Sec. 46.04. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if, with a firearm, he intentionally, knowingly, or recklessly goes:

(1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution; or

(2) on the premises of a polling place on the day of an election.

(b) It is a defense to prosecution under this section that the actor was in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard.

(c) An offense under this section is a Class A misdemeanor.

Sec. 46.05. UNLAWFUL POSSESSION OF FIREARM BY FELON. (a) A person who has been convicted of a felony involving an act of violence or threatened violence to a person or property commits an offense if he possesses a firearm away from the premises where he lives.

(b) An offense under this section is a felony of the third

degree.

Sec. 46.06. PROHIBITED WEAPONS. (a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event it is a felony of the third degree.

Sec. 46.07. UNLAWFUL TRANSFER OF FIREARM. (a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun

to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, ~~loans,~~ or gives or offers to sell, rent, lease, ~~loan,~~ or give to any child younger than 18 years any firearm; or

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

Sec. 46.08. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922 (b)(3)(A), Public Law 90-618, 90th Congress.

CHAPTER 47. GAMBLING

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CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement that, dependent on chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) contracts of indemnity of guaranty, or life, health, property, or accident insurance; or

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest.

(2) "Gambling place" means any real estate, building,

room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, the receiving, holding, recording, or forwarding of bets or offers to bet, or the conducting of a lottery or the playing of gambling devices.

(3) "Gambling device" means any mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(4) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered and designed to enhance the actor's chances of winning.

(5) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(6) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(7) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(8) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class C misdemeanor.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an

offense if he intentionally or knowingly does any of the following acts:

(1) operates or participates in the earnings of a gambling place;

(2) receives, records, or forwards a bet or offer to bet;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a felony of the third degree.

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this

section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a felony of the third degree.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) An offense under this section is a felony of the third degree.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE OR EQUIPMENT. (a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that

he knows is designed as a subassembly or essential part of such device.

(c) An offense under this section is a felony of the third degree.

Sec. 47.07. POSSESSION OF GAMBLING PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(b) An offense under this section is a Class A misdemeanor.

Sec. 47.08. EVIDENCE. (a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.

(b) In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

Sec. 47.09. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Sec. 2. CONFORMING AMENDMENTS. (A) The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

~~"Article 14.03. AUTHORITY OF PEACE OFFICER.~~

~~"(a) Any peace officer may arrest, without warrant, persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws.~~

~~"(b) A peace officer may arrest a person without a warrant if he has been informed by a reliable person that another is committing an offense under Chapter 46 (Weapons) of the Penal Code."~~

"Article 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. <u>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.</u>"

"Article 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, other than when required to give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding $500, and to imprisonment not exceeding six months."

"Article 21.14. PERJURY AND AGGRAVATED PERJURY [~~FALSE SWEARING~~]

"An indictment for perjury or aggravated perjury [~~false swearing~~] 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 pleadings, 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 [~~officer~~] by whom the oath was administered with the allegation

of the falsity of the matter on which the perjury or aggravated perjury [~~false swearing~~] is assigned."

"Article 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 [~~negligently~~] or with criminal negligence in the commission [~~committing~~] 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 [~~negligently~~] or with criminal negligence."

"Article 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, as defined in Chapter 3 of the Penal Code.

"(b) A count may contain as many separate paragraphs charging the same offense as 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.

~~[May contain several counts but only one offense~~

~~An indictment, information or complaint may contain as many~~

~~counts charging the same offense as the attorney who prepares it, acting in good faith, may think necessary to insert, but may not charge more than one offense. An indictment or information shall be sufficient if any one of its counts be sufficient.~~]

"Article 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 [~~sane~~], and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

"Article 27.02. DEFENDANT'S PLEADINGS

"The pleadings and motions of the defendant shall be [~~On the part of the defendant, the following are the only pleadings~~]:

"(1) A [~~1. The~~] motion to set aside or an exception to an [~~the~~] indictment or information for some matter of form or substance;

"(2) [~~2.~~] A special plea as provided in Article 27.05 of this code [~~setting forth one or more facts as cause why the defendant ought not be tried upon the accusation presented against him~~];

[~~(3) An exception to the indictment or information for some matter of form or substance;~~]

"(3) [~~4.~~] A plea of guilty;

"(4) [~~5.~~] A plea of not guilty;

"(5) [~~6.~~] A plea of nolo contendere, the [~~. The~~] legal effect of which [~~such plea~~] shall be the same as that of

a plea of guilty, except that such [~~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;

"(6) An [~~7. Defendant's~~] application for probation, if any [~~and~~];

"(7) An [~~8. Defendant's~~] election, if any, to have the jury assess the punishment if he is found guilty; and [~~9.~~]

"(8) Any other motions or pleadings that are by law permitted to be filed."

"Article 27.05. DEFENDANT'S SPECIAL PLEA [~~SPECIAL PLEAS FOR DEFENDANT~~]

"A defendant's [~~The~~] only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode that was or should have been consolidated into one trial, and that the former prosecution [~~pleas which can be heard for the defendant are~~]:

"(1) resulted in acquittal;

"[~~1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense; and~~]

"(2) resulted in conviction;

"[~~2. That he has been before acquitted of the accusation against him in a court of competent jurisdiction, whether the acquittal was regular or irregular.~~]

"(3) was improperly terminated; 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."

"Article 28.01. PRE-TRIAL

"Section 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

"(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

"(2) Pleadings of the defendant;

"(3) Special pleas, if any;

"(4) Exceptions to the form or substance of the indictment or information;

"(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

"(6) Motions to suppress evidence--When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon

opposing affidavits, or upon oral testimony, subject to the discretion of the court;

"(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury; [~~and~~]

"(8) Discovery; and[~~.~~]

"(9) Entrapment.

"Section 2. When a criminal case is set for such pre-trial hearing, the defendant shall have five days after notice of setting in which to file his motions, pleadings and exceptions; and any such preliminary matters not raised and filed within the time allowed will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

"Section 3. The notice mentioned in Section 2 above shall be sufficient if given in any one of the following ways:

"(1) By announcement made by the court in open court in the presence of the defendant or his attorney of record;

"(2) By personal service upon the defendant or his attorney of record;

"(3) By mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing. If the defendant has no attorney

of record such notice shall be addressed to defendant at the address shown on his bond, if the bond shows such an address, and if not, it may be addressed to one of the sureties on his bond. If the envelope containing the notice is properly addressed, stamped and mailed, the state will not be required to show that it was received."

"Article 29.01. BY OPERATION OF LAW

"Criminal actions are continued by operation of law if:

"(1) The individual defendant [~~the accused~~] has not been arrested;

"(2) A defendant corporation or association has not been served with summons; or [~~(1)~~]

"(3) There [~~there~~] is not sufficient time for trial at that term of court."

"Article 36.03. WITNESSES 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."

"Article 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.

"Article 37.07. VERDICT MUST BE GENERAL; SEPARATE HEARING ON PROPER PUNISHMENT

"Section 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

"(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

"(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

"Section 2. [~~Alternate procedure~~] (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal [~~corporation~~] court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be

imposed.

"(b) If a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) [~~in capital cases where the State has made it known in writing prior to trial that it will seek the death penalty, (2)~~] in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) [~~(3)~~] in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

"(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

"Section 3. Evidence of prior criminal record in all criminal cases after a finding of guilty

"(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

"(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing

the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

"(c) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

"(d) When the judge assesses the punishment, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

"(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence."

"Article 37.08. CONVICTION OF LESSER INCLUDED OFFENSE [~~OFFENSES OF DIFFERENT DEGREE~~]

"In a prosecution for an offense with lesser included [~~including lower~~] offenses, the jury may find the defendant not guilty of the greater [~~higher~~] offense, but guilty of any lesser included [~~lower~~] offense [~~included~~]."

"Article 37.09. LESSER INCLUDED OFFENSE [~~OFFENSES CONSISTING OF DEGREES~~]

"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;

"(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;

"(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.

~~[The following offenses include different degrees:~~

~~1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder;~~

~~2. An assault with intent to commit any felony, which includes all assaults of an inferior degree;~~

~~3. Maiming, which includes aggravated and simple assault and battery;~~

~~4. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary;~~

~~5. Riot, which includes unlawful assembly;~~

~~6. Kidnapping or abduction, which includes false imprisonment; and~~

~~7. Every offense against the person includes within it assaults with intent to commit said offence, when such attempt~~

~~is a violation of the penal law.~~]

"Article 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 [~~such~~] 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 16 [~~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. [~~an offense defined in Chapter Three of the Penal Code of Texas pertaining to wife or child desertion or wilful failure or refusal to support his or her minor children.~~]

"Article 38.18. PERJURY AND AGGRAVATED PERJURY [~~FALSE SWEARING~~]

"(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) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

"[~~In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court.~~]"

"Article 40.03. GROUNDS FOR NEW TRIAL IN FELONY

"New trials, in cases of felony, shall be granted the defendant for the following causes, and for no other:

"(1) [~~1.~~] Where the defendant is an individual and has been tried in his absence, except as otherwise provided in this code, or has been denied counsel;

"(2) [~~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) [~~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) [~~4.~~] Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct;

"(5) [~~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) [~~6.~~] Where new evidence [~~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) [~~7.~~] Where the jury, after having retired to deliberate upon a case, has received other evidence [~~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 consumption [~~drinking~~] of alcoholic beverage [~~liquor~~] by a juror shall not be sufficient ground for a new trial;

"(8) [~~8.~~] Where, from the misconduct of the jury, the court is of the 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; and

"(9) [~~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) [~~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."

"Article 43.01. DISCHARGING JUDGMENT FOR FINE

"(a) When the [judgment and] sentence against an individual [a] defendant is for fine and costs, he shall be discharged from the same:

"(1) when [1. When] the amount thereof has been fully paid; or

"(2) when [2. When] remitted by the proper authority; or

"(3) when [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."

"Article 43.03. PAYMENT OF FINE [PAY OR JAIL]

"(a) If a defendant is sentenced to pay [When a judgment and sentence have been rendered against a defendant for] a fine or [and] 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."

"Article 45.32. THE ONLY SPECIAL PLEA

"The only special pleas [~~plea~~] allowed are those defined in Article 27.05 of this code [~~is that of former acquittal or conviction for the same offense~~]."

"Article 49.16. COMMITMENT OF HOMICIDE SUSPECT [~~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 [~~an accomplice or accessory~~] 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."

"Article 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 [~~an accomplice or accessory~~] 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.

"Article 50.03. VERDICT IN FIRE INQUEST

"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, [~~either as principal or accessory,~~] and in what manner. If such a jury is unable to so ascertain, it shall find and certify accordingly."

(B) Chapter 12, Code of Criminal Procedure, 1965, is amended to read as follows:

"CHAPTER TWELVE

"LIMITATION

"Article 12.01. FELONIES [~~TREASON; THEFT OR CONVERSION BY EXECUTOR, ADMINISTRATOR OR GUARDIAN; FORGERY~~]

"Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

"(1) no limitation: murder and manslaughter; [~~An indictment for the following offenses may be presented within ten years from the time of the commission of the offense, and not afterward:~~

~~"1. treason;~~]

"(2) ten years from the date of the commission of

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the offense;

"(A) [~~2.~~] theft [~~or conversion~~] 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) [~~3.~~] 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.

"[~~Article 12.02. RAPE~~

"~~An indictment for rape may be presented within one year, and not afterward.~~

"~~Article 12.03. THEFT, ETC., FIVE YEARS~~

"~~An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward.~~

"~~Article 12.04. OTHER FELONIES~~

"~~An indictment for any other felony may be presented within~~

~~three years from the commission of the offense, and not afterward, except murder, for which an indictment may be presented at any time.~~]

"Article 12.02. MISDEMEANORS [~~12.05. MISDEMEANORS, TWO YEARS~~]

"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.

"Article 12.03. AGGRAVATED OFFENSES, ATTEMPT, CONSPIRACY, SOLICITATION

"(a) The limitation period for criminal attempt is the same as that of the offense attempted.

"(b) The limitation period for criminal conspiracy is the same as that of the most serious offense that is the object of the conspiracy.

"(c) The limitation period for criminal solicitation is the same as that of the felony solicited.

"(d) Any offense that bears the title 'aggravated' shall carry the same limitation period as the primary crime.

"Article 12.04. [~~12.06~~] 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.

"Article 12.05. [~~12.07~~] ABSENCE FROM STATE AND TIME OF PENDENCY OF INDICTMENT, ETC., NOT COMPUTED

"(a) [~~1.~~] The time during which the accused is absent from the state shall not be computed in the period of limitation.

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"(b) [~~2.~~] The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

"(c) [~~3.~~] 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.

"Article 12.06. [~~12.08~~] 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.

"Article 12.07. [~~12.09~~] AN INFORMATION IS 'PRESENTED,' WHEN

"An information is considered as 'presented,' when it has been filed by the proper officer in the proper court."

(C) Chapter 13, Code of Criminal Procedure, 1965, is amended to read as follows:

"CHAPTER THIRTEEN

"VENUE

"Article 13.01. OFFENSES [~~NOT~~] COMMITTED OUTSIDE THIS [~~IN THE~~] STATE

"Offenses [~~Prosecutions for offenses~~] committed wholly or in part outside [~~without, and made punishable by law within~~] this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted [~~begun and carried on~~]

in any county in which the offender is found or in any county in which an element of the offense occurs.

"Article 13.02. FORGERY

"Forgery may be prosecuted in any county where the writing [~~written instrument~~] 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. In addition, a [~~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.

"[~~Article 13.03. COUNTERFEITING~~

"~~Counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed.~~]

"Article 13.03. PERJURY [~~13.04. PERJURY AND FALSE SWEARING~~]

"Perjury and aggravated perjury [~~false swearing~~] may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

"Article 13.04. [~~13.05~~] ON THE BOUNDARY OF [~~TWO~~] COUNTIES

"An offense committed on the boundaries [~~boundary~~] of [~~any~~] two or more counties, or within four hundred yards thereof, may be prosecuted and punished in any one of such counties [~~either county~~].

"Article 13.05. CRIMINAL HOMICIDE COMMITTED OUTSIDE THIS STATE

"The offense of criminal homicide committed wholly or in part outside 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.

"[~~Article 13.06. PERSON DYING OUT OF THE STATE~~

"~~If any person, being at the time within this State, shall inflict upon another, also within this State, an injury of which such person afterward dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted.~~

"~~Article 13.07. PERSON WITHIN THE STATE INFLICTING INJURY ON ANOTHER OUT OF THE STATE~~

"~~If a person, being at the time within this State, shall inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted.~~

"~~Article 13.08. PERSON WITHOUT THE STATE INFLICTING AN INJURY ON ONE WITHIN~~

"~~If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.~~]

"Article 13.06. [~~13.09~~] 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.

"Article 13.07. [~~13.10~~] 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.

"[~~Article 13.11 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.~~]

"Article 13.08. [~~13.12~~] THEFT

"Where property is stolen in one county and removed [~~carried off~~] by the offender to another county, the offender [~~he~~] may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same [~~carried it~~].

"Article 13.09. [~~13.13~~] HINDERING SECURED CREDITORS [~~MORTGAGED PROPERTY~~]

"If secured [~~When mortgaged~~] 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 [~~lien on it~~] is filed [~~registered~~].

[~~Article 13.14 ACCOMPLICES AND ACCESSORIES TO THEFT~~

~~Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice, or accessory to the offense.~~

~~Article 13.15 RECEIVING AND CONCEALING STOLEN PROPERTY~~

~~Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender.~~

~~Article 13.16 BY COMMISSIONER OF DEEDS~~

~~Offenses committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State.~~]

"Article 13.10. PERSON ACTING UNDER AUTHORITY OF THIS STATE

"An offense committed outside this State by any officer acting under the authority of this State, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted in the county of his residence or, if a nonresident of this State, in Travis County.

"Article 13.11. [~~13.17~~] 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.

[~~Article 13.10 EMBEZZLEMENT~~

~~Embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it.~~]

"Article 13.12. [~~13.19~~] FALSE IMPRISONMENT AND[~~,~~] KIDNAPPING [~~AND ABDUCTION~~]

"Venue for false imprisonment and kidnapping is in [~~and abduction belongs~~] either [~~to~~] the county in which the offense was committed, or in [~~to~~] any county through, into or out of which the person falsely imprisoned or[~~,~~] kidnapped [~~or taken in such manner as to constitute abduction~~] may have been taken [~~carried~~].

"Article 13.13. [~~13.20~~] CONSPIRACY

"Criminal conspiracy [~~Conspiracy~~] may be prosecuted in the county where the conspiracy was entered into, [~~or~~] in the county where the conspiracy [~~same~~] was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If a conspiracy was entered into outside 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. [~~; and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where~~

~~such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.~~]

"Article 13.14. [~~13.24~~] 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.

"Article 13.15. [~~13.22~~] 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 [~~his~~] court be in session, but the grand jury has been discharged, he shall immediately recall the [~~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.

"Article 13.16. CRIMINAL NONSUPPORT

"Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

[~~Article 13.23. CONVICTION OR ACQUITTAL IN ANOTHER STATE~~

~~When an act has been committed out of this State by an inhabitant thereof, and such act is an offense by the laws of this State, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this State.~~

~~Article 13.24. JURISDICTION IN DIFFERENT COUNTIES~~

~~Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county.~~]

"Article 13.17. [~~13.25~~] PROOF OF VENUE

"In all cases mentioned in this Chapter, the indictment or information, or any pleading [~~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 by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue [~~jurisdiction~~].

"Article 13.18. [~~13.26~~] OTHER OFFENSES

"If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

"Article 13.19. WHERE VENUE CANNOT BE DETERMINED

"If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides, in the county in which he is apprehended, or in the county to which he is extradited."

(D) The Code of Criminal Procedure, 1965, is amended by adding Chapter 17A, to read as follows:

"CHAPTER SEVENTEEN-A

"CORPORATIONS AND ASSOCIATIONS

Article

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"Article 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 government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

"(3) 'High managerial agent' means:

"(A) an officer of a corporation or association;

"(B) a partner in a partnership; or

"(C) an agent of a corporation or association who has duties of such responsibility that his conduct may reasonably be assumed to represent the policy of the corporation or association.

"(4) 'Person,' 'he,' and 'him' include corporation and association.

"Article 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.

"Article 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 20 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 30 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.

"Article 17A.04. SERVICE ON CORPORATION

"(a) Except as provided in Paragraph (d) of this article, 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) of this article, 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 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) of this article together with the return receipt.

"(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

"Article 17A.05. SERVICE ON ASSOCIATION

"(a) Except as provided in Paragraph (b) of this article, 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.

"Article 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 10 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) 10 full days must elapse after the day of appearance before the corporation or association may be tried.

"Article 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.

"Article 17A.08. PROBATION

"The benefits of the adult probation laws shall not be available to corporations and associations.

"Article 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."

(E) Chapter 18, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"CHAPTER EIGHTEEN

"SEARCH WARRANTS

Article

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18.17. Disposition of Abandoned or Unclaimed Property. 187
18.18. Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument. 189
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"Article 18.01. SEARCH WARRANT

"(a) A 'search warrant' is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate.

"(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

"Article 18.02. GROUNDS FOR ISSUANCE

"A search warrant may be issued to search for and seize:

"(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

"(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

"(3) arms and munitions kept or prepared for the purpose of insurrection or riot;

"(4) weapons prohibited by the Penal Code;

"(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

"(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

"(7) drugs kept, prepared, or manufactured in violation of the laws of this state;

"(8) any property the possession of which is prohibited by law;

"Article 18.03. SEARCH WARRANT MAY ORDER ARREST

"If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

"Article 18.04. CONTENTS OF WARRANT

"A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

"(1) that it run in the name of 'The State of Texas';

"(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

"(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named; and

"(4) that it be dated and signed by the magistrate.

"Article 18.05. WARRANTS FOR FIRE MARSHALS AND HEALTH OFFICERS

"(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.

"(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation is present in the premises sought to be inspected.

"(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

"(1) the age and general condition of the premises;

"(2) previous violations or hazards found present in the premises;

"(3) the type of premises;

"(4) the purposes for which the premises are used; and

"(5) the presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

"Article 18.06. EXECUTION OF WARRANTS

"(a) A peace officer to whom a search warrant is delivered

shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate.

"(b) The officer shall, upon going to the place ordered to be searched or before seizing any property for which he is ordered to make the search, give notice of his purpose to the person who has charge of or is an inmate of the place or who has possession of the property described in the warrant.

"Article 18.07. DAYS ALLOWED FOR WARRANT TO RUN

"The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution. The magistrate issuing a search warrant under the provisions of this chapter shall endorse on such search warrant the date and hour of the issuance of the same.

"Article 18.08. 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.

"Article 18.09. SHALL SEIZE ACCUSED AND PROPERTY

"When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate.

"Article 18.10. HOW RETURN MADE

"Upon returning the search warrant, the officer shall state

on the back of the same, or on some paper attached to it, the manner in which it has been executed and shall likewise deliver to the magistrate an inventory of the property taken in his possession under the warrant.

"Article 18.11. CUSTODY OF PROPERTY FOUND

"When a warrant has been issued to search a suspected place and there be found any property as alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

"Article 18.12. MAGISTRATE SHALL INVESTIGATE

"The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

"Article 18.13. 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 for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

"Article 18.14. EXAMINING TRIAL

"The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

"Article 18.15. CERTIFY RECORD TO PROPER COURT

"The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the

same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

"Article 18.16. PREVENTING CONSEQUENCES OF THEFT

"All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

"Article 18.17. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY

"(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county.

"(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the

owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(d) The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owner if known, and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer

1 such property for sale.

2 "(e) The real owner of any property sold shall have the
3 right to file a claim to the proceeds of such sale with the
4 commissioners court of the county in which the sale took place.
5 If the claim is allowed by the commissioners court, the county
6 treasurer shall pay the owner such funds as were paid into the
7 treasury of the county as proceeds of the sale. If the claim is
8 denied by the commissioners court or if said court fails to act
9 upon such claim within 90 days, the claimant may sue the county
10 treasurer in a court of competent jurisdiction in the county, and
11 upon sufficient proof of ownership, recover judgment against such
12 county for the recovery of the proceeds of the sale.

13 "Article 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA,
14 PROHIBITED WEAPON, CRIMINAL INSTRUMENT

15 "(a) Following the final conviction of a person for
16 possession of a gambling device or equipment, altered gambling
17 equipment, or gambling paraphernalia, for an offense involving
18 a criminal instrument, or an offense involving a prohibited weapon,
19 the court entering the judgment of conviction shall order that
20 the machine, device, gambling equipment or gambling paraphernalia,
21 instrument, or weapon be destroyed or forfeited to the state.
22 If forfeited, the court shall order the contraband delivered to
23 the state, any political subdivision of the state, or to any state
24 institution or agency. If gambling proceeds were seized, the
25 court shall order them forfeited to the state and shall transmit
26 them to the grand jury of the county in which they were seized
27 for use in investigating alleged violations of the Penal Code,

1 or to the state, any political subdivision of the state, or to
2 any state institution or agency.
3 "(b) If there is no prosecution or conviction following
4 seizure, the magistrate to whom the return was made shall notify
5 in writing the person found in possession of the alleged gambling
6 device or equipment, altered gambling equipment or gambling
7 paraphernalia, gambling proceeds, prohibited weapon, or criminal
8 instrument to show cause why the property seized should not be
9 destroyed or the proceeds forfeited.
10 "(c) The magistrate shall include in the notice a detailed
11 description of the property seized and the total amount of alleged
12 gambling proceeds; the name of the person found in possession;
13 the address where the property or proceeds were seized; and the
14 date and time of the seizure.
15 "(d) The magistrate shall send the notice by registered
16 or certified mail, return receipt requested, to the person found
17 in possession at the address where the property or proceeds were
18 seized. If no one was found in possession, or the possessor's
19 address is unknown, the magistrate shall post the notice on the
20 courthouse door.
21 "(e) Any person interested in the alleged gambling device
22 or equipment, altered gambling equipment or gambling paraphernalia,
23 gambling proceeds, prohibited weapon, or criminal instrument
24 seized must appear before the magistrate on the 20th day following
25 the date the notice was mailed or posted. Failure to timely
26 appear forfeits any interest the person may have in the property
27 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 gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, 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) of this article.

"(g) For purposes of this article:

"(1) 'criminal instrument' has the meaning defined in the Penal Code;

"(2) 'gambling device or equipment, altered gambling equipment or gambling paraphernalia' has the meaning defined in the Penal Code;

"(3) 'prohibited weapon' has the meaning defined in the Penal Code.

"Article 18.19. 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 Chapter 46 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 Chapter 46, in which event Article ~~18.31~~ 18.18 of this code applies; or

"(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

"(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized.

conditions to exist and describing the areas thus affected. [~~Each article of said Title of the Penal Code is made a part hereof.~~]"

(H) Section 8, Article 5765, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Section 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 [~~or criminally~~] for any act or acts done by them while in the discharge of their duty. When a suit [~~or proceeding~~] 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 [~~prosecuting or~~] instituting the suit [~~or proceeding~~] 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 non-suited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs."

(I) Article 4664, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 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 of any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, [~~gambling, or for the purpose of prostitution,~~] is hereby declared to be a common nuisance. Any person who knowingly maintains [~~or assists in maintaining~~] such a place is guilty of maintaining a nuisance."

(J) Article 4667, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 4667. INJUNCTIONS TO ABATE PUBLIC NUISANCES [~~GAMING AND DISORDERLY 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 consist a public nuisance and shall be enjoined at the suit of either the State or any citizen thereof:

"(1) [~~1.~~] For gambling, gambling promotion, or communicating gambling information prohibited by law; [~~gaming or keeping or exhibiting games prohibited by law,~~]

"(2) [~~2.~~] For the promotion or aggravated promotion of prostitution, or compelling prostitution; [~~keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code,~~]

"(3) [~~3.~~] For the commercial manufacturing, commercial distribution, or commercial exhibition of obscene

material; [~~carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code,~~]

"(4) For the commercial exhibition of live dances or exhibition which depicts real or simulated sexual intercourse or deviate sexual intercourse;

"(5) [~~4,~~] For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged either directly or indirectly, as prohibited by law [~~the Penal Code~~].

"(b) Any person who may use or be about to use, or who may be a party to [~~aid or abet another in~~] 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."

(K) Article 7.01 of the Texas Business Corporation Act is amended by adding Sections F and G to read as follows:

"F. When a corporation is convicted of a felony or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(L) Article 8.16 of the Texas Business Corporation Act is amended by adding Sections F and G to read as follows:

"F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(M) Article 7.01 of the Texas Non-Profit Business Corporation Act (Article 1396-7.01, Vernon's Texas Civil Statutes) is amended by adding Sections F and G to read as follows:

"F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(N) Article 8.15 of the Texas Non-Profit Business Corporation Act (Article 1963-7.01, Vernon's Texas Civil Statutes) is amended by adding Sections F and G to read as follows:

"F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

Sec. 3. REPEALER. (a) The following laws are repealed:

V.A.P.C. Art.	Legis.	Session Law Citation Session	Ch.	Sec.	Page
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(b) The following articles of the Code of Criminal Procedure, 1965, as amended, are repealed: 2.24, 7.11, 7.12, 15.27, 22.01a, and 38.07.

(c) Chapter 5, Code of Criminal Procedure, 1965 (Art.

5.01 through 5.07), is repealed.

(d) The following sections of the Business & Commerce Code are repealed: 17.09, 17.10, 17.28, 25.01, 25.02, 25.03, and 35.19.

(e) Article 6876, Revised Civil Statutes of Texas, 1925, is repealed.

(f) Chapter 2, Section 14, Acts of the 61st Legislature, 2nd Called Session, 1969 (Article 6145—9, Section 14, Vernon's Texas Civil Statutes), is repealed.

Sec. 4. EFFECTIVE DATE. This Act takes effect on January 1, 1974.

Sec. 5. DISPOSITION OF UNREPEALED ARTICLES. (a) The purpose of this section is to provide for transfer of articles of the Penal Code of Texas, 1925, which are not repealed by this Act to the civil statutes or other appropriate places within the framework of Texas statute law, without reenactment and without altering the meaning or effect of the unrepealed articles, so that when this Act takes effect there will be only one Texas Penal Code without the confusion that would result if remnants of the old Penal Code were allowed to continue to exist in that form in the statute books.

(b) In order to carry out the purpose of this section, the Texas Legislative Council shall prepare and submit to the secretary of state, for publication with the Acts of the 63rd Legislature, Regular Session, 1973, an appendix listing the unrepealed articles of the Penal Code of Texas, 1925, as amended, and prescribing for each unrepealed title, chapter, or article a new official citation.

The council may include in the appendix any comments that may be helpful to users of the statute books.

(c) In order that the five-volume Vernon's Texas Penal Code Annotated may be completely replaced, the council in the appendix authorized by Subsection (b) of this section may also recommend transfer and reclassification of statutes which were not enacted as part of the Penal Code of Texas, 1925, but were compiled as articles of Vernon's Texas Penal Code.

(d) Nothing in this section or done under its authority alters the meaning or effect of any statute of this state.

Sec. 6. SAVING PROVISIONS. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed 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 repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act, for conduct constituting an offense under laws repealed by this Act, is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

(c) In a criminal action pending on or commenced after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

Sec. 7. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars 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 this rule is hereby suspended.

~~Weddington~~
~~Simmons~~
~~Nabers~~
~~Doyle~~
~~Grant~~
~~McDonald of Hidalgo~~

Neher

FLOOR AMENDMENT NO. ___

Amend the ~~Committee~~ Amendment No. ___ to S.B. 34 ~~H.B. 514~~, Section 2, Subsection J by deleting the word "consist" and substituting the word "constitute" at page 195, line 17.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

(3) (R)

Nelson

FLOOR AMENDMENT NO. ___

Amend ~~Committee~~ the Amendment No. ___ to S.B. [redacted], Section 3, by inserting the figure "1233" between lines 43 and 44 on page 214.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. —

Amend ~~Committee~~ Amendment No. ___ to S.B. 34, [redacted], Section 1, Section 21.11, Subsection (b) Subdivision (3) by adding the word "or" following the semicolon on page 63, line 3.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hallman

Chief Clerk
House of Representatives

(B)

NABERS

FLOOR AMENDMENT NO. ___

Amend ~~Committee~~ the Amendment No. ___ of S.B. 34, Section 1, Section 19.02, Subdivision (a)(3) by deleting the words "or criminally negligent homicide" on page 52, lines 12 and 13.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hassman

Chief Clerk
House of Representatives

AMENDMENT NO._____ BY Nabers

Amend Section 1 of the Substitute to S.B. No. 34 as follows:

(1) Strike the words "deception or coercion" on line 18, page 7, in Section 1.07(12)(A) and substitute the words "force, threat, or fraud".

(2) Strike the words "property dispositions" on line 23, page 7, in Section 1.07(12)(C) and substitute the word "decisions".

(3) Renumber Subdivisions (4) through (7) of Section 31.01 on pages 81 and 82 as Subdivisions (5) through (8) and add a new Subdivision (4) to read as follows:

(4) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(D) given solely to detect the commission of an offense.

MAY 18 1973

DATE _____

READ AND ADOPTED

Dorothy Hollman

Chief Clerk
House of Representatives

63R4033(8) JRP

AMENDMENT NO._____ BY NABERS

Amend the Substitute to S.B. No. 34 by substituting the word "any" for the word "a" as follows:

(1) in Section 12.31 on line 23, page 42;

(2) in Section 12.32 on line 27, page 42;

(3) in Section 12.33 on line 7, page 43;

(4) in Section 12.42 on line 7, page 44; and

(5) in Section 12.43 on lines 19 and 24, page 44.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hoffman
Chief Clerk
House of Representatives

63R4033(7) JRP

AMENDMENT NO._____ BY Nabers

Amend Subsection (e), Section 28.06, in Section 1 of the Substitute to S.B. No. 34, to read as follows:

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Holleman
Chief Clerk
House of Representatives

63R4033(5) JRP

AMENDMENT NO._____ BY NABERS

Amend Section 6 in the Substitute to S.B. No. 34 by adding the words "on or" before the word "after" in lines 13, 18, and 19, page 221, and in line 1, page 222, and by amending Subsection (b) to read as follows:

(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act, for conduct constituting an offense under laws repealed by this Act, is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

DATE MAY 18 1973

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

63R4033(6) JRP

AMENDMENT NO._____ BY Nabers

Amend Section 1 of the Substitute to S.B. No. 34 as follows:

(1) Renumber Sections 31.05 through 31.09 as Sections 31.06 through 31.10.

(2) Add a new Section 31.05 to read as follows:

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade

63R4033(4) JRP

DATE MAY 18 1973

READ AND ADOPTED

Chief Clerk
House of Representatives

This amendment was adopted by the House
Ben Ramey

1 secret; or

2 (3) communicates or transmits a trade secret.

3 (c) An offense under this section is a felony of the third

4 degree.

5 (3) Renumber "31.05" through "31.09" on lines 20-24, page

6 79, as "31.06" through "31.10" and add between lines 19 and 20,

7 page 79, the following:

8 "31.05. Theft of Trade Secrets."

AMENDMENT NO._____ BY Nugent

Amend Section 9.61 of Section 1 of the Substitute to S.B. No. 34 to read as follows:

Sec. 9.61. PARENT-CHILD. (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

MAY 18 1973

DATE _____

READ AND ADOPTED

Dorothy Holleman
Chief Clerk
House of Representatives

63R4033(1) JRP

AMENDMENT NO._____ BY_____

Amend Subsection (b)(4) of Section 28.03 in Section 1 of the Substitute to S.B. No. 34 by striking the "or" at the end of line 14, page 73, and by adding paragraphs (C), (D), and (E) between lines 18 and 19, page 73, to read as follows:

(C) regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

(D) regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or

(E) regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.

DATE MAY 21 1973

READ AND ADOPTED

Chief Clerk
House of Representatives

63R4033(2) JRP

13

AMENDMENT NO._____ BY_____

1 Amend Subsection (d)(4)(A) of Section 31.03 in Section 1
2 of the Substitute to S.B. No. 34 by adding the words "or any part
3 thereof" between the word "goats" and the word "under" on line
4 27, page 83.

MAY 21 1973

DATE _____

READ AND ADOPTED

Chief Clerk
House of Representatives

63R4033(3) JRP

(14)

Floor Amendment By Nelson

Amend S.F. 34, committee substitute on page 140, line 2, by adding a "comma (,)" after the word "minor" and before the word "in"

DATE MAY 21 1973

(15)

Bake

Floor Amendment No._____

Amend floor substitute to S.B. 34 as follows:

Delete lines 10 through 14, page 14, and substitute in lieu thereof the following:

"Sec. 3.01. DEFINITION. In this chapter "criminal episode" means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property)."

MAY 21 1973

DATE _____

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

16

AMENDMENT NO._____ BY Carness

Amend Section 42.01(a) in Section 1 of Nabers Amendment to SB 34, by deleting the word "or" at the end of line 6, page 128, by deleting the period at the end of line 8, page 128, and substituting a semicolon and the word "or", and by adding Subdivision (10) to read as follows:

(10) exposes his anus or genitals in a public place.

DATE MAY 21 1973

READ AND ADOPTED by record vote 122 ayes, 14 noes, 3 present not voting

Dorothy Hallman
Chief Clerk
House of Representatives

63R3642 JRP-D

17

AMENDMENT NO._____ BY Poerner

Amend the floor substitute to S.B. No. 34 by striking in line 5, page 140F, the words "loans," and "loan."

DATE MAY 21 1973

READ AND ADOPTED

Dorothy Freeman
Chief Clerk
House of Representatives

(D) 3rd reading

AMENDMENT NO._____ BY Grant

Amend Subsection (a) (4) of Section 21.07 in Section 1 of S.B. No. 34 as substituted by adding the words "or genitals" between the word "anus" and the word "of".

DATE MAY 23 1973

READ AND ADOPTED

Chief Clerk
House of Representatives

(3) 3 reading

AMENDMENT NO._____ BY Carmen

Amend Subdivision (10) in Section 42.01 (a) of Section 1 of S.B. No. 34 as Substituted, to read as follows:

"(10) exposes his anus or genitals in a public place and is reckless about whether another MAY BE present who will be offended or alarmed by his act."

MAY 23 1973

DATE _____

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

2nd reading

AMENDMENT NO. _____ BY Nugent

Amend Section 2, Nabers substitute to, S. B. No. 34, by deleting the period at the end of line 12, page 183, and substituting a semicolon and adding between lines 12 and 13, page 183, the following:

"(9) implements or instruments used in the commission of a crime."

DATE MAY 23 1973

READ AND ADOPTED

Sarah Hoffman
Chief Clerk
House of Representatives

Enrolled _____

Enrolling Clerk

S.B. No. 34

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 law; repealing replaced law; 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

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, Criminal Mischief, 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
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. Definitions.
1.08. Preemption.

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This code shall be known and may be cited as the Penal Code.

Sec. 1.02. OBJECTIVES OF CODE. The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

(1) to insure the public safety through:

(A) the deterrent influence of the penalties hereinafter provided;

(B) the rehabilitation of those convicted of violations of this code; and

(C) such punishment as may be necessary to

prevent likely recurrence of criminal behavior;

(2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;

(3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;

(4) to safeguard conduct that is without guilt from condemnation as criminal;

(5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons accused or convicted of offenses; and

(6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

Sec. 1.03. EFFECT OF CODE. (a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 of this code apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect

a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

Sec. 1.04. TERRITORIAL JURISDICTION. (a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

(2) the conduct outside this state constitutes an attempt to commit an offense inside this state;

(3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or

(4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that

constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water (and the air space above the land and water) over which this state has power to define offenses.

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, and 3.01 through 3.12 of the Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) apply to the construction of this code.

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

Sec. 1.07. DEFINITIONS. (a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.

(3) "Agency" includes authority, board, bureau,

commission, committee, council, department, district, division, and office.

(4) "Another" means a person other than the actor.

(5) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(6) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(7) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8) "Conduct" means an act or omission and its accompanying mental state.

(9) "Consent" means assent in fact, whether express or apparent.

(10) "Criminal negligence" is defined in Section 6.03 of this code (Culpable Mental States).

(11) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(13) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(14) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(15) "Government" means the state; a county, municipality, or political subdivision of the state; or any branch or agency of the state, a county, municipality, or political subdivision.

(16) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(17) "Individual" means a human being who has been born and is alive.

(18) "Intentional" is defined in Section 6.03 of

this code (Culpable Mental States).

(19) "Knowing" is defined in Section 6.03 of this code (Culpable Mental States).

(20) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(21) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(22) "Oath" includes affirmation.

(23) "Omission" means failure to act.

(24) "Owner" means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor.

(25) "Peace officer" means a person so designated by the Code of Criminal Procedure, 1965. as amended ?

(26) "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(27) "Person" means an individual, corporation, or association.

(28) "Possession" means actual care, custody, control, or management.

(29) "Public place" means any place to which the

public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(30) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(31) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(32) "Reckless" is defined in Section 6.03 of this code (Culpable Mental States).

(33) "Rule" includes regulation.

(34) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(35) "Swear" includes affirm.

(36) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(b) The definition of a term in this code applies to each grammatical variation of the term.

Sec. 1.08. PREEMPTION. No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

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.
2.06. Prima Facie Case.

CHAPTER 2. BURDEN OF PROOF

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT. All persons

are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Sec. 2.02. EXCEPTION. (a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . . ."

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

Sec. 2.03. DEFENSE. (a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . . ."

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly

1 labeled in accordance with this chapter has the procedural and
2 evidentiary consequences of a defense.
3 Sec. 2.04. AFFIRMATIVE DEFENSE. (a) An affirmative defense
4 in this code is so labeled by the phrase: "It is an affirmative
5 defense to prosecution . . . ."
6 (b) The prosecuting attorney is not required to negate the
7 existence of an affirmative defense in the accusation charging
8 commission of the offense.
9 (c) The issue of the existence of an affirmative defense
10 is not submitted to the jury unless evidence is admitted supporting
11 the defense.
12 (d) If the issue of the existence of an affirmative defense
13 is submitted to the jury, the court shall charge that the defendant
14 must prove the affirmative defense by a preponderance of evidence.
15 Sec. 2.05. PRESUMPTION. When this code or another penal
16 law establishes a presumption with respect to any fact, it has
17 the following consequences:
18 (1) if there is sufficient evidence of the facts
19 that give rise to the presumption, the issue of the existence of
20 the presumed fact must be submitted to the jury, unless the court
21 is satisfied that the evidence as a whole clearly precludes a
22 finding beyond a reasonable doubt of the presumed fact; and
23 (2) if the existence of the presumed fact is submitted
24 to the jury, the court shall charge the jury, in terms of the
25 presumption and the specific element to which it applies, as
26 follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the element to which the presumption applies, or any other element of the offense charged, it shall acquit the defendant and say by its verdict not guilty.

Sec. 2.06. PRIMA FACIE CASE. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof.

CHAPTER 3. MULTIPLE PROSECUTIONS

Section

3.01. Definition.
3.02. Consolidation and Joinder of Prosecutions.
3.03. Sentences for Offenses Arising Out of Same Criminal Episode.
3.04. Severance.

CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode"

means the repeated commission of any one offense defined in Title 7 of this code (Offenses Against Property).

Sec. 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS.

(a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 of this code, the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the

provisions of Section 3.03 of this code do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Section

6.01. Requirement of Voluntary Act or Omission.
6.02. Requirement of Culpability.
6.03. Definitions of Culpable Mental States.
6.04. Causation: Conduct and Results.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION.

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession, in violation of a statute that provides that the conduct is an offense.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a statute provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as

provided in Subsection (b) of this section, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b) of this section, intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

(1) intentional;

(2) knowing;

(3) reckless;

(4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES.

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect

to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Sec. 6.04. CAUSATION: CONDUCT AND RESULTS. (a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient

to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

(1) a different offense was committed; or

(2) a different person or property was injured, harmed, or otherwise affected.

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. Defenses Excluded.
[Sections 7.04-7.20 reserved for expansion]
SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS
7.21. Definitions.
7.22. Criminal Responsibility of Corporation or Association.
7.23. Criminal Responsibility of Person for Conduct in Behalf of Corporation or Association.
7.24. Defense to Criminal Responsibility of Corporation or Association.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally

1 responsible as a party to an offense if the offense is committed
2 by his own conduct, by the conduct of another for which he is
3 criminally responsible, or by both.
4 (b) Each party to an offense may be charged with commission
5 of the offense.
6 (c) All traditional distinctions between accomplices and
7 principals are abolished by this section, and each party to an
8 offense may be charged and convicted without alleging that he
9 acted as a principal or accomplice.
10 Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER.
11 (a) A person is criminally responsible for an offense
12 committed by the conduct of another if:
13 (1) acting with the kind of culpability required for
14 the offense, he causes or aids an innocent or nonresponsible
15 person to engage in conduct prohibited by the definition of the
16 offense;
17 (2) acting with intent to promote or assist the
18 commission of the offense, he solicits, encourages, directs, aids,
19 or attempts to aid the other person to commit the offense; or
20 (3) having a legal duty to prevent commission of the
21 offense and acting with intent to promote or assist its commission,
22 he fails to make a reasonable effort to prevent commission of the
23 offense.
24 (b) If, in the attempt to carry out a conspiracy to commit
25 one felony, another felony is committed by one of the conspirators,
26 all conspirators are guilty of the felony actually committed,

1 though having no intent to commit it, if the offense was committed
2 in furtherance of the unlawful purpose and was one that should
3 have been anticipated as a result of the carrying out of the
4 conspiracy.
5 Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which
6 an actor's criminal responsibility is based on the conduct of
7 another, the actor may be convicted on proof of commission of the
8 offense and that he was a party to its commission, and it is no
9 defense:
10 (1) that the actor belongs to a class of persons
11 that by definition of the offense is legally incapable of
12 committing the offense in an individual capacity; or
13 (2) that the person for whose conduct the actor is
14 criminally responsible has been acquitted, has not been prosecuted
15 or convicted, has been convicted of a different offense or of a
16 different type or class of offense, or is immune from prosecution.
17 [Sections 7.04-7.20 reserved for expansion]
18 SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS
19 Sec. 7.21. DEFINITIONS. In this subchapter:
20 (1) "Agent" means a director, officer, employee, or
21 other person authorized to act in behalf of a corporation or
22 association.
23 (2) "High managerial agent" means:
24 (A) a partner in a partnership;
25 (B) an officer of a corporation or association;
26 (C) an agent of a corporation or association

who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. (a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

(1) in this code where corporations and associations are made subject thereto;

(2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or associations plainly appears; or

(3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or associations plainly appears.

(b) A corporation is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the board of directors acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT

IN BEHALF OF CORPORATION OR ASSOCIATION. (a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense.

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. (a) It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

(b) Subsection (a) of this section does not apply if it is plainly inconsistent with the legislative purpose expressed in the law defining the particular offense.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Section

8.01. Insanity.

8.02. Mistake of Fact.

8.03. Mistake of Law.
8.04. Intoxication.
8.05. Duress.
8.06. Entrapment.
8.07. Age Affecting Criminal Responsibility.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.01. INSANITY. (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of mental disease or defect, either did not know that his conduct was wrong or was incapable of conforming his conduct to the requirements of the law he allegedly violated.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Sec. 8.02. MISTAKE OF FACT. (a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

Sec. 8.03. MISTAKE OF LAW. (a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the

actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:

(1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

Sec. 8.04. INTOXICATION. (a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section "intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

1 Sec. 8.05. DURESS. (a) It is an affirmative defense to
2 prosecution that the actor engaged in the proscribed conduct
3 because he was compelled to do so by threat of imminent death or
4 serious bodily injury to himself or another.
5 (b) In a prosecution for an offense that does not constitute
6 a felony, it is an affirmative defense to prosecution that the
7 actor engaged in the proscribed conduct because he was compelled
8 to do so by force or threat of force.
9 (c) Compulsion within the meaning of this section exists
10 only if the force or threat of force would render a person of
11 reasonable firmness incapable of resisting the pressure.
12 (d) The defense provided by this section is unavailable /
13 if the actor intentionally, knowingly, or recklessly placed himself
14 in a situation in which it was probable that he would be subjected
15 to compulsion.
16 (e) It is no defense that a person acted at the command
17 or persuasion of his spouse, unless he acted under compulsion
18 that would establish a defense under this section.
19 Sec. 8.06. ENTRAPMENT. (a) It is a defense to prosecution
20 that the actor engaged in the conduct charged because he was
21 induced to do so by a law enforcement agent using persuasion or
22 other means likely to cause persons to commit the offense. Conduct
23 merely affording a person an opportunity to commit an offense
24 does not constitute entrapment.
25 (b) In this section "law enforcement agent" includes
26 personnel of the state and local law enforcement agencies as well

as of the United States and any person acting in accordance with instructions from such agents.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY.

(a) Except as provided by Subsection (c) of this section, a person may not be prosecuted or convicted for any offense that he committed when younger than 15 years.

(b) Except as provided by Subsection (c) of this section, a person who is younger than 17 years may not be prosecuted or convicted for any offense, unless the juvenile court waives jurisdiction and certifies him for criminal prosecution.

(c) Subsections (a) and (b) of this section shall not apply to prosecutions for:

(1) aggravated perjury, when it appears by proof that the actor had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended; or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town.

(d) No person who has been adjudged a delinquent child may be convicted of any offense alleged in the petition to adjudge him a delinquent child or any offense within the knowledge of the juvenile judge as evidenced by anything in the record of the juvenile proceeding.

(e) No person may, in any case, be punished by death for

1 an offense committed while he was younger than 17 years.

2 CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Section

5 9.01. Definitions.

6 9.02. Justification as a Defense.

7 9.03. Confinement as Justifiable Force.

8 9.04. Threats as Justifiable Force.

9 9.05. Reckless Injury of Innocent Third Person.

10 9.06. Civil Remedies Unaffected.

11 [Sections 9.07-9.20 reserved for expansion]

12 SUBCHAPTER B. JUSTIFICATION GENERALLY

13 9.21. Public Duty.

14 9.22. Necessity.

15 [Sections 9.23-9.30 reserved for expansion]

16 SUBCHAPTER C. PROTECTION OF PERSONS

17 9.31. Self-Defense.

18 9.32. Deadly Force in Defense of Person.

19 9.33. Defense of Third Person.

20 9.34. Protection of Life or Health.

21 [Sections 9.35-9.40 reserved for expansion]

22 SUBCHAPTER D. PROTECTION OF PROPERTY

23 9.41. Protection of One's Own Property.

24 9.42. Deadly Force to Protect Property.

25 9.43. Protection of Third Person's Property.

26 9.44. Use of Device to Protect Property.

[Sections 9.45-9.50 reserved for expansion]

SUBCHAPTER E. LAW ENFORCEMENT

9.51. Arrest and Search.

9.52. Prevention of Escape from Custody.

[Sections 9.53-9.60 reserved for expansion]

SUBCHAPTER F. SPECIAL RELATIONSHIPS

9.61. Parent—Child.

9.62. Educator—Student.

9.63. Guardian—Incompetent.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

Sec. 9.02. JUSTIFICATION AS A DEFENSE. It is a defense to prosecution that the conduct in question 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. THREATS AS JUSTIFIABLE FORCE. The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

Sec. 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON. Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

Sec. 9.06. CIVIL REMEDIES UNAFFECTED. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Sections 9.07-9.20 reserved for expansion]

SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c) of this section, conduct is justified if

the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

(1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

Sec. 9.22. NECESSITY. Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of

reasonableness, the harm sought to be prevented by the law prescribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[Sections 9.23-9.30 reserved for expansion]

SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b) of this section, a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) of this section;

(3) if the actor consented to the exact force used or attempted by the other; or

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts

to use unlawful force against the actor.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34 of this code.

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31 of this code;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, rape, aggravated rape, robbery,

or aggravated robbery.

Sec. 9.33. DEFENSE OF THIRD PERSON. A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 of this code in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

Sec. 9.34. PROTECTION OF LIFE OR HEALTH. (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other's life in an emergency.

[Sections 9.35-9.40 reserved for expansion]

SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree

the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41 of this code; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property;

and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 of this code in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 through 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Sections 9.45-9.50 reserved for expansion]

SUBCHAPTER E. LAW ENFORCEMENT

Sec. 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and/ the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) of this section and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to

make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) of this section and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d) of this section.

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d) of this section.

Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a penal institution or a peace officer is justified in using any force, including deadly force, that he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention

of persons charged with or convicted of a crime.

[Sections 9.53-9.60 reserved for expansion]

SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT--CHILD. The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

Sec. 9.62. EDUCATOR--STUDENT. The use of force, but not deadly force, against a person is justified:

(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Sec. 9.63. GUARDIAN--INCOMPETENT. The use of force, but not deadly force, against a mental incompetent is justified:

(1) if the actor is the incompetent's guardian or

someone similarly responsible for the general care and supervision of the incompetent; and

(2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Section

12.01. Punishment in Accordance with Code.

12.02. Classification of Offenses.

12.03. Classification of Misdemeanors.

12.04. Classification of Felonies.

[Sections 12.05-12.20 reserved for expansion]

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

12.21. Class A Misdemeanor Punishment.

12.22. Class B Misdemeanor Punishment.

12.23. Class C Misdemeanor Punishment.

[Sections 12.24-12.30 reserved for expansion]

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

12.31. First-Degree Felony Punishment.

12.32. Second-Degree Felony Punishment.

12.33. Third-Degree Felony Punishment.

[Sections 12.34-12.40 reserved for expansion]

SUBCHAPTER D. EXCEPTIONAL SENTENCES

12.41. Classification of Offenses Outside this Code.

12.42. Penalties for Repeat and Habitual Felony Offenders.

12.43. Penalties for Repeat and Habitual Misdemeanor Offenders.

12.44. Reduction of Third Degree Felony to Misdemeanor.

12.45. Admission of Unadjudicated Offense.

[Sections 12.46-12.50 reserved for expansion]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

12.51. Authorized Punishments for Corporations and Associations.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure, 1965. as amended

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil

penalty may be included in the sentence.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are designated as felonies or misdemeanors.

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS.

(a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors;

(2) Class B misdemeanors;

(3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into three categories:

(1) felonies of the first degree;

(2) felonies of the second degree;

(3) felonies of the third degree.

(b) An offense designated a felony in this code without specification as to category is a felony of the third degree.

[Sections 12.05-12.20 reserved for expansion]

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and imprisonment.

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $1,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $200.

[Sections 12.24-12.30 reserved for expansion]

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. FIRST-DEGREE FELONY PUNISHMENT. An individual adjudged guilty of a felony of the first degree shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than five years.

Sec. 12.32. SECOND-DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 20 years or less than two years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed $10,000.

Sec. 12.33. THIRD-DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by confinement in the Texas Department of Corrections for any term of not more than 10 years or less than two years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $5,000.

[Sections 12.34-12.40 reserved for expansion]

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE. For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if confinement in a penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS. (a) If it be shown on the trial of a third-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished for a second-degree felony.

(b) If it be shown on the trial of a second-degree felony that the defendant has been once before convicted of any felony,

on conviction he shall be punished for a first-degree felony.

(c) If it be shown on the trial of a first-degree felony that the defendant has been once before convicted of any felony, on conviction he shall be punished by confinement in the Texas Department of Corrections for life, or for any term of not more than 99 years or less than 15 years.

(d) If it be shown on the trial of any felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by confinement in the Texas Department of Corrections for life.

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. (a) If it be shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it be shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

Sec. 12.44. REDUCTION OF THIRD-DEGREE FELONY TO MISDEMEANOR.

(a) A court may set aside a judgment or verdict of guilty of a felony of the third degree and enter a judgment of guilt and

punish for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such sentence would best serve the ends of justice.

(b) When a court is authorized to enter judgment of guilt and sentence for a lesser category of offense as provided in Subsection (a) of this section, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Sec. 12.45. ADMISSION OF UNADJUDICATED OFFENSE. (a) An individual may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

[Sections 12.46-12.50 reserved for expansion]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS. (a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine

only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(1) $10,000 if the offense is a felony of any category;

(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) of this section, 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.

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.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(c) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a felony of the third degree, the offense is a Class A misdemeanor.

Sec. 15.03. CRIMINAL SOLICITATION. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's

intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under

Section 15.02 or 15.03 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

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.

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT. (a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For purposes of this section, "criminal instrument" means anything that is specially designed, made, or adapted for the commission of an offense.

(c) An offense under this section is a felony of the third degree.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Section

19.01. Types of Criminal Homicide.

19.02. Murder.

19.03. Voluntary Manslaughter.

19.04. Involuntary Manslaughter.

19.05. Evidence.

19.06. Criminally Negligent Homicide.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.01. TYPES OF CRIMINAL HOMICIDE. (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

Sec. 19.02. MURDER. (a) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than voluntary or involuntary manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(b) An offense under this section is a felony of the first degree.

Sec. 19.03. VOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he causes the death of an individual under

circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.

(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(d) An offense under this section is a felony of the second degree.

Sec. 19.04. INVOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he:

(1) recklessly causes the death of an individual; or

(2) by accident or mistake when operating a motor vehicle while intoxicated and, by reason of such intoxication, causes the death of an individual.

(b) For purposes of this section, "intoxication" means that the actor does not have the normal use of his mental or physical faculties by reason of the voluntary introduction of any substance into his body.

(c) An offense under this section is a felony of the third degree.

Sec. 19.05. EVIDENCE. In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

Sec. 19.06. CRIMINALLY NEGLIGENT HOMICIDE. (a) A person commits an offense if he causes the death of an individual by criminal negligence.

(b) An offense under this section is a Class A misdemeanor.

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Section

20.01. Definitions.
20.02. False Imprisonment.
20.03. Kidnapping.
20.04. Aggravated Kidnapping.

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if he is a child less than 14 years of age or an

incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

Sec. 20.02. FALSE IMPRISONMENT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child less than 14 years of age;

(2) the actor was a relative of the child; and

(3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class B misdemeanor unless the actor recklessly exposes the victim to a substantial risk of serious bodily injury, in which event it is a felony of the third degree.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest

or detaining an individual lawfully arrested.

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

Sec. 20.04. AGGRAVATED KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;

(4) inflict bodily injury on him or violate or abuse him sexually;

(5) terrorize him or a third person; or

(6) interfere with the performance of any governmental or political function.

(b) An offense under this section is a felony of the first

degree unless the actor voluntarily releases the victim alive and in a safe place, in which event it is a felony of the second degree.

CHAPTER 21. SEXUAL OFFENSES

Section

21.01. Definitions.
21.02. Rape.
21.03. Aggravated Rape.
21.04. Sexual Abuse.
21.05. Aggravated Sexual Abuse.
21.06. Homosexual Conduct.
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.

CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

(1) "Deviate sexual intercourse" means any contact between any part of the genitals of one person and the mouth or anus of another person.

(2) "Sexual contact" means any touching of the anus or 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.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 21.02. RAPE. (a) A person commits an offense 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:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

(2) he compels her to submit or participate by any threat that would prevent resistance by a woman of ordinary resolution;

(3) she has not consented and he knows she is unconscious or physically unable to resist;

(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;

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;

(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) An offense under this section is a felony of the second

degree.

Sec. 21.03. AGGRAVATED RAPE. (a) A person commits an offense if he commits rape as defined in Section 21.02 of this code or rape of a child as defined in Section 21.09 of this code and he:

(1) causes serious bodily injury or attempts to cause death to the victim or another in the course of the same criminal episode; or

(2) compels submission to the rape by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone.

(b) An offense under this section is a felony of the first degree.

Sec. 21.04. SEXUAL ABUSE. (a) A person commits an offense if, without the other person's consent and with intent to arouse or gratify the sexual desire of any person, the actor:

(1) 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) 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:

(1) the actor compels the other person to submit or

1 participate by force that overcomes such earnest resistance as
2 might be reasonably expected under the circumstances;
3 (2) the actor compels the other person to submit or
4 participate by any threat that would prevent resistance by a
5 person of ordinary resolution;
6 (3) the other person has not consented and the actor
7 knows the other person is unconscious or physically unable to
8 resist;
9 (4) the actor knows that as a result of mental disease
10 or defect the other person is at the time of the deviate sexual
11 intercourse incapable either of appraising the nature of the act
12 or of resisting it;
13 (5) the other person has not consented and the actor
14 knows the other person is unaware that deviate sexual intercourse
15 is occurring;
16 (6) the actor knows that the other person submits
17 or participates because of the erroneous belief that he is the
18 other person's spouse; or
19 (7) the actor has intentionally impaired the other
20 person's power to appraise or control the other person's conduct
21 by administering any substance without the other person's
22 knowledge.
23 (c) An offense under this section is a felony of the second
24 degree.
25 Sec. 21.05. AGGRAVATED SEXUAL ABUSE. (a) A person commits
26 an offense if he commits sexual abuse as defined in Section 21.04

of this code or sexual abuse of a child as defined in Section 21.10 of this code and he:

(1) causes serious bodily injury or attempts to cause death to the victim or another in the course of the same criminal episode; or

(2) compels submission to the sexual abuse by threat of death, serious bodily injury, or kidnapping to be imminently inflicted on anyone.

(b) An offense under this section is a felony of the first degree.

Sec. 21.06. HOMOSEXUAL CONDUCT. (a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

(b) An offense under this section is a Class C misdemeanor.

Sec. 21.07. PUBLIC LEWDNESS. (a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his act:

(1) an act of sexual intercourse;

(2) an act of deviate sexual intercourse;

(3) an act of sexual contact;

(4) an act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

(b) An offense under this section is a Class A misdemeanor.

Sec. 21.08. INDECENT EXPOSURE. (a) A person commits an

offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

(b) An offense under this section is a Class C misdemeanor.

Sec. 21.09. RAPE OF A CHILD. (a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 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.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

Sec. 21.10. SEXUAL ABUSE OF A CHILD. (a) A person commits an offense 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 the child is younger than 17 years.

(b) It is a defense to prosecution under this section that the child was of the opposite sex, was at the time of the alleged offense 14 years or older, and had, prior to the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual

intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was of the opposite sex and was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

(1) engages in sexual contact with the child; or

(2) exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) It is a defense to prosecution under this section that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in:

(1) sexual intercourse;

(2) deviate sexual intercourse;

(3) sexual contact; or

(4) indecent exposure as defined in Subsection (a)(2) of this section.

(c) An offense under this section is a felony of the third degree.

Sec. 21.12. GENERAL PROVISIONS. The exclusion of conduct with a spouse from the definitions of offenses in Sections 21.02

through 21.05 of this code (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.

CHAPTER 22. ASSAULTIVE OFFENSES

Section

22.01. Assault.
22.02. Aggravated Assault.
22.03. Deadly Assault on a Peace Officer.
22.04. Injury to a Child.
22.05. Reckless Conduct.
22.06. Consent as Defense to Assaultive Conduct.
22.07. Terroristic Threat.
22.08. Aiding Suicide.

CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. (a) A person commits an offense if he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens another with imminent bodily injury; or

(3) intentionally or knowingly causes physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under this section is a Class A misdemeanor unless the offense is committed under Subsection (a)(2) or (a)(3)

of this section, in which event it is a Class C misdemeanor.

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if he commits assault as defined in Section 22.01 of this code and he:

(1) causes serious bodily injury to another;

(2) causes bodily injury to a peace officer in the lawful discharge of official duty when he knows or has been informed the person assaulted is a peace officer; or

(3) uses a deadly weapon.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the third degree.

Sec. 22.03. DEADLY ASSAULT ON A PEACE OFFICER. (a) A person commits an offense if, with a firearm or a prohibited weapon, he intentionally or knowingly causes serious bodily injury to a peace officer in the lawful discharge of official duty where he knows or has been informed the person assaulted is a peace officer.

(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.

(c) An offense under this section is a felony of the first degree.

Sec. 22.04. INJURY TO A CHILD. (a) A person commits an

offense if he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct that causes serious bodily injury, serious physical or mental deficiency or impairment, or deformity to a child who is 14 years of age or younger.

(b) An offense under this section is a felony of the second degree.

Sec. 22.05. RECKLESS CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(c) An offense under this section is a Class B misdemeanor.

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Reckless Conduct) of this code if:

(1) the conduct did not threaten or inflict serious bodily injury; or

(2) the victim knew the conduct was a risk of:

(A) his occupation;

(B) recognized medical treatment; or

(C) a scientific experiment conducted by recognized methods.

Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an

offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

(2) place any person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place.

(b) An offense under this section is a Class B misdemeanor unless it is committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

Sec. 22.08. AIDING SUICIDE. (a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a felony of the third degree.

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. Enticing a Child.

25.05. Criminal Nonsupport.

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. (a) An individual commits an offense if:

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

(2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1)

of this section that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

(e) An offense under this section is a felony of the third degree.

Sec. 25.02. INCEST. (a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

(1) his ancestor or descendant by blood or adoption;

(2) his stepchild or stepparent, while the marriage creating that relationship exists;

(3) his parent's brother or sister of the whole or half blood;

(4) his brother or sister of the whole or half blood or by adoption; or

(5) the children of his brother or sister of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of

the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if he takes or retains a child younger than 18 years out of this state when he:

(1) knows that his taking or retention violates a temporary or permanent judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction and knows that a suit for divorce, or a civil suit or application for habeas corpus to dispose of the child's custody, has been filed.

(b) It is a defense to prosecution under Subsection (a)(2) of this section that the actor returned the child to this state within seven days after the date of the commission of the offense.

(c) An offense under this section is a felony of the third degree.

Sec. 25.04. ENTICING A CHILD. (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor.

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits

an offense if he intentionally or knowingly fails to provide support that he can provide and that he was legally obligated to provide for his children younger than 18 years, or for his spouse who is in needy circumstances.

(b) Proof that the actor has contributed no support or insufficient support to his child, or to his spouse who is in needy circumstances, is prima facie evidence of a violation of this section.

(c) For purposes of this section, "insufficient support" means support less than the support needed by a child or spouse to meet the minimal requirements of the child or spouse necessary for food, clothing, shelter, and medical care.

(d) For purposes of this section, "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(e) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense and a spouse shall be a competent witness.

(f) It is an affirmative defense to prosecution under this section that the actor could not provide the support that he was legally obligated to provide.

(g) During the pendency of a prosecution under this section, the court, after notice and a hearing, may enter temporary orders providing for support and enforce such orders by contempt proceedings.

(h) Except as provided in Subsection (i) of this section,

an offense under this section is a Class A misdemeanor.

(i) An offense under this section is a felony of the third degree if the actor:

(1) has been convicted one or more times under this section; or

(2) commits the offense while residing in another state.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Section

28.01. Definitions.
28.02. Arson.
28.03. Criminal Mischief.
28.04. Reckless Damage or Destruction.
28.05. Actor's Interest in Property.
28.06. Amount of Pecuniary Loss.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected

with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

Sec. 28.02. ARSON. (a) A person commits an offense 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) An offense under this section is a felony of the second degree, unless any bodily injury less than death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner; or

(2) he intentionally or knowingly tampers with the

tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person.

(b) An offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $5; or

(B) except as provided in Subdivision (4)(B) of this subsection, it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is $5 or more but less than $20;

(3) a Class A misdemeanor if the amount of pecuniary loss is $20 or more but less than $200;

(4) a felony of the third degree if:

(A) the amount of pecuniary loss is $200 or more but less than $10,000;

(B) regardless of the amount of pecuniary loss, the actor causes impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service;

(C) regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;

(D) regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or

(E) regardless of the amount of pecuniary loss,

the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.

(5) a felony of the second degree if the amount of the pecuniary loss is $10,000 or more.

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

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 fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market

value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) of this section, the amount of loss is deemed to be greater than $20 but less than $200.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

CHAPTER 29. ROBBERY

Section

29.01. Definitions.
29.02. Robbery.
29.03. Aggravated Robbery.

Sec. 29.01. DEFINITIONS. In this chapter:

(1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

(2) "Property" means:

(A) tangible or intangible personal property including anything severed from land; or

(B) a document, including money, that represents or embodies anything of value.

Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 of this code and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and he:

(1) causes serious bodily injury to another; or

(2) uses or exhibits a deadly weapon.

(b) An offense under this section is a felony of the first degree.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Section

30.01. Definitions.
30.02. Burglary.
30.03. Burglary of Coin-Operated Machines.
30.04. Burglary of Vehicles.
30.05. Criminal Trespass.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit

a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a felony of the second degree.

(d) An offense under this section is a felony of the first degree if:

(1) the premises are a habitation; or

(2) any party to the offense is armed with explosives or a deadly weapon; or

(3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

Sec. 30.03. BURGLARY OF COIN-OPERATED MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine or other coin-operated contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every

kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

Sec. 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) An offense under this section is a felony of the third degree.

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "entry" means the intrusion of the entire body; and

(2) "notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders; or

(C) signs posted to be reasonably likely to

come to the attention of intruders.

(c) An offense under this section is a Class C misdemeanor unless it is committed in a habitation, in which event it is a Class A misdemeanor.

CHAPTER 31. THEFT

Section

31.01. Definitions.
31.02. Consolidation of Theft Offenses.
31.03. Theft.
31.04. Theft of Service.
31.05. Theft of Trade Secrets.
31.06. Presumption for Theft by Check.
31.07. Unauthorized Use of a Vehicle.
31.08. Value.
31.09. Aggregation of Amounts Involved in Theft.
31.10. Actor's Interest in Property.

CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense; or

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of

1 any person; or

2 (F) to take or withhold action as a public

3 servant, or to cause a public servant to take or withhold action.

4 (2) "Deception" means:

5 (A) creating or confirming by words or conduct

6 a false impression of law or fact that is likely to affect the

7 judgment of another in the transaction, and that the actor does

8 not believe to be true;

9 (B) failing to correct a false impression of

10 law or fact that is likely to affect the judgment of another in

11 the transaction, that the actor previously created or confirmed

12 by words or conduct, and that the actor does not now believe to

13 be true;

14 (C) preventing another from acquiring information

15 likely to affect his judgment in the transaction;

16 (D) selling or otherwise transferring or

17 encumbering property without disclosing a lien, security interest,

18 adverse claim, or other legal impediment to the enjoyment of the

19 property, whether the lien, security interest, claim, or impediment

20 is or is not valid, or is or is not a matter of official record;

21 or

22 (E) promising performance that is likely to

23 affect the judgment of another in the transaction and that the

24 actor does not intend to perform or knows will not be performed,

25 except that failure to perform the promise in issue without other

26 evidence of intent or knowledge is not sufficient proof that the

actor did not intend to perform or knew the promise would not be performed.

(3) "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(4) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(D) given solely to detect the commission of an offense.

(5) "Obtain" means to bring about a transfer or purported transfer of a nonpossessory interest in property, whether to the actor or another.

(6) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(7) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(8) "Steal" means to acquire property or service by theft.

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 of this code constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Sec. 31.03. THEFT. (a) A person commits an offense 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 owner's effective consent; or

(2) the property is stolen and the actor obtains it from another or exercises control over the property obtained by another knowing it was stolen.

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice.

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than $5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is $5 or more but less than $20; or

(B) the value of the property stolen is less

than $5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is $20 or more but less than $200;

(4) a felony of the third degree if:

(A) the value of the property stolen is $200 or more but less than $10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of $10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than $200 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the second degree if the value of the property stolen is $10,000 or more.

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token; or

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them.

(b) For purposes of this section, intent to avoid payment

is presumed if the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $5;

(2) a Class B misdemeanor if the value of the service stolen is $5 or more but less than $20;

(3) a Class A misdemeanor if the value of the service stolen is $20 or more but less than $200;

(4) a felony of the third degree if the value of the service stolen is $200 or more but less than $10,000;

(5) a felony of the second degree if the value of the service stolen is $10,000 or more.

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret; or

(3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK. (a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of property under Section 31.03 of this code (Theft) or to avoid payment for service under Section 31.04 of this code (Theft of Service) is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2) of this section, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(c) If written notice is given in accordance with Subsection (b) of this section, it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

Sec. 31.07. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a felony of the third degree.

Sec. 31.08. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this

chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

Sec. 31.09. AGGREGATION OF AMOUNTS INVOLVED IN THEFT.

When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 31.10. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Section

32.01. Definitions.
32.02. Value.
32.03. Aggregation of Amounts Involved in Fraud.
[Sections 32.04-32.20 are reserved for expansion]
SUBCHAPTER B. FORGERY
32.21. Forgery.
32.22. Criminal Simulation.
[Sections 32.23-32.30 are reserved for expansion]
SUBCHAPTER C. CREDIT
32.31. Credit Card Abuse.
32.32. False Statement to Obtain Property or Credit.
32.33. Hindering Secured Creditors.
32.34. Fraud in Insolvency.
32.35. Receiving Deposit, Premium, or Investment in Failing

Financial Institution.

[Sections 32.36-32.40 are reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Section

32.41. Issuance of Bad Check.
32.42. Deceptive Business Practices.
32.43. Commercial Bribery.
32.44. Rigging Publicly Exhibited Contest.
32.45. Misapplication of Fiduciary Property or Property of Financial Institution.
32.46. Securing Execution of Document by Deception.
32.47. Fraudulent Destruction, Removal, or Concealment of Writing.
32.48. Endless Chain Scheme.

CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) of this section, value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the

owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) of this section, the property or service is deemed to have a value of more than $20 but less than $200.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) of this section to determine value for purposes of this chapter.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Sections 32.04-32.20 are reserved for expansion]

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not

authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A) of this subdivision; or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B) of this subdivision.

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) of this section an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement,

credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) An offense under this section is a felony of the second degree if the writing is or purports to be part of an issue of money, securities, postage or revenue stamps, or other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he sells, passes, or otherwise utters an object so made or altered;

(3) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(4) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor.

[Sections 32.23-32.30 are reserved for expansion]

SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is

issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(b) A person commits an offense if:

(1) with intent to obtain property or service fraudulently, he presents or uses a credit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain property or service, he uses a fictitious credit card or the pretended number or description of a fictitious credit card;

(3) he receives property or service that he knows has been obtained in violation of this section;

(4) he steals a credit card or, with knowledge that it has been stolen, receives a credit card with intent to use it, to sell it, or to transfer it to a person other than the issuer

or the cardholder;

(5) he buys a credit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card;

(7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card with intent to use it;

(9) he possesses two or more incomplete credit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a credit card is incomplete if part of the matter that an issuer requires to appear on the credit card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to

defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a felony of the third degree.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT.

(a) For purposes of this section, "credit" includes:

(1) a loan of money;

(2) furnishing property or service on credit;

(3) extending the due date of an obligation;

(4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;

(5) a line or letter of credit; and

(6) a credit card, as defined in Section 32.31 of this code (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor.

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) Except as provided in Subsection (e) of this section,

an offense under this section is a Class A misdemeanor.

(e) If the actor removes the property, the offense is a felony of the third degree.

Sec. 32.34. FRAUD IN INSOLVENCY. (a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors;

(2) he intentionally falsifies any writing or record relating to the property or any claim against the debtor; or

(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.

(b) An offense under this section is a Class A misdemeanor.

Sec. 32.35. RECEIVING DEPOSIT, PREMIUM, OR INVESTMENT IN FAILING FINANCIAL INSTITUTION. (a) A person directing or participating in the direction of a financial institution commits

an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:

(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or

(2) it is about to suspend operations or go into receivership.

(b) It is a defense to prosecution under this section that the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution.

(c) An offense under this section is a Class A misdemeanor.

[Sections 32.36-32.40 reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) of this section may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is a Class C misdemeanor.

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by

established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit an offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

(c) An offense under this section is a Class A misdemeanor.

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this

section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;

(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit as consideration for:

(1) violating a duty to a beneficiary; or

(2) otherwise causing harm to a beneficiary by act or omission.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) of this section.

(d) An offense under this section is a felony of the third degree.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome

(including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) of this section.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) trustee, guardian, administrator, executor, conservator, and receiver;

(B) any other person acting in a fiduciary capacity, but not a commercial bailee; and

(C) an officer, manager, employee, or agent

carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class A misdemeanor if the value of the property misapplied is less than $200;

(2) a felony of the third degree if the value of the property is $200 or more but less than $10,000;

(3) a felony of the second degree if the value of the property is $10,000 or more.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION.

(a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a felony of the third degree.

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT

OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

Sec. 32.48. ENDLESS CHAIN SCHEME. (a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal

or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Section

36.01. Definitions.
36.02. Bribery.
36.03. Coercion of Public Servant or Voter.
36.04. Improper Influence.
36.05. Tampering with Witness.
36.06. Retaliation.
36.07. Compensation for Past Official Behavior.
36.08. Gift to Public Servant by Person Subject to his Jurisdiction.
36.09. Offering Gift to Public Servant.

36.10. Defenses.

TITLE 8. OFFENSES AGAINST THE STATE AND PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. DEFINITIONS. In this chapter:

(1) "Coercion" means a threat, however communicated:

(A) to commit any offense;

(B) to inflict bodily injury on the person threatened or another;

(C) to accuse any person of any offense;

(D) to expose any person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election,

appointment, or employment.

(5) "Vote" means to cast a ballot in an election regulated by law.

Sec. 36.02. BRIBERY. (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on 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 an offense if he knowingly 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 an offense if he knowingly 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) An offense under this section is a felony of the third degree unless committed under Subsection (b) of this section, in which event it is a felony of the second degree.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific

performance of his official duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

Sec. 36.04. IMPROPER INFLUENCE. (a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.05. TAMPERING WITH WITNESS. (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

(1) to testify falsely;

(2) to withhold any testimony, information, document, or thing;

(3) to elude legal process summoning him to testify or supply evidence; or

(4) to absent himself from an official proceeding to which he has been legally summoned.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) of this section.

(c) An offense under this section is a felony of the third degree.

Sec. 36.06. RETALIATION. (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act in retaliation for or on account of the service of another as a public servant, witness, or informant.

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

Sec. 36.07. COMPENSATION FOR PAST OFFICIAL BEHAVIOR.

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer any benefit on 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 intentionally or knowingly 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, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from 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) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Sec. 36.10. DEFENSES. (a) It is a defense to prosecution under Section 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), or 36.09 (Offering Gift to Public Servant) of this code that the benefit involved was:

(1) a fee prescribed by law to be received by a

public servant or any other benefit to which the public servant is lawfully entitled;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) a trivial benefit incidental to personal, professional, or business contacts that involves no substantial risk of undermining official impartiality; or

(4) 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. 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.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter:

(1) "Governmental record" means anything:

(A) belonging to, received by, or kept by government for information; or

(B) required by law to be kept by others for information of government.

(2) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(3) "Statement" means any representation of fact.

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made; and

(2) the statement is required or authorized by law to be made under oath.

(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02 of this code, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.

Sec. 37.04. MATERIALITY. (a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 of this code (Aggravated Perjury) that the actor retracted his false statement:

(1) before completion of the testimony at the official proceeding; and

(2) before it became manifest that the falsity of the statement would be exposed.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 of this code or aggravated perjury under Section 37.03 of this code that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that the oath was administered or taken in an irregular manner, or that there was some

irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) of this code that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER. (a) A person commits an offense if he:

(1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or

(2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

(b) An offense under this section is a Class B misdemeanor.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.

(a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document,

or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a Class A misdemeanor.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record.

(b) It is an exception to the application of Subsection (a)(3) of this section that the governmental record is destroyed pursuant to legal authorization.

(c) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Section

38.01. Definitions.
38.02. Failure to Identify as Witness.
38.03. Resisting Arrest or Search.
38.04. Evading Arrest.
38.05. Hindering Apprehension or Prosecution.
38.06. Compounding.
38.07. Escape.
38.08. Permitting or Facilitating Escape.
38.09. Effect of Unlawful Custody.
38.10. Implements for Escape.
38.11. Bail Jumping and Failure to Appear.
38.12. Barratry.
38.13. Hindering Proceedings by Disorderly Conduct.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody

or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(5) "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

Sec. 38.02. FAILURE TO IDENTIFY AS WITNESS. (a) A person commits an offense if he intentionally refuses to report or gives a false report of his name and residence address to a peace officer who has lawfully stopped him and requested the information.

(b) An offense under this section is a Class C misdemeanor.

Sec. 38.03. RESISTING ARREST OR SEARCH. (a) A person commits an offense if he intentionally prevents or obstructs a

1 person he knows is a peace officer or a person acting in a peace
2 officer's presence and at his direction from effecting an arrest
3 or search of the actor or another by using force against the peace
4 officer or another.
5 (b) It is no defense to prosecution under this section
6 that the arrest or search was unlawful.
7 (c) Except as provided in Subsection (d) of this section,
8 an offense under this section is a Class A misdemeanor.
9 (d) An offense under this section is a felony of the third
10 degree if the actor uses a deadly weapon to resist the arrest or
11 search.
12 Sec. 38.04. EVADING ARREST. (a) A person commits an
13 offense if he intentionally flees from a person he knows is a
14 peace officer attempting to arrest him.
15 (b) It is an exception to the application of this section
16 that the attempted arrest is unlawful.
17 (c) An offense under this section is a Class B misdemeanor.
18 Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION.
19 (a) A person commits an offense if, with intent to hinder
20 the arrest, prosecution, conviction, or punishment of another for
21 an offense, he:
22 (1) harbors or conceals the other;
23 (2) provides or aids in providing the other with any
24 means of avoiding arrest or effecting escape; or
25 (3) warns the other of impending discovery or
26 apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) of this section that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor.

Sec. 38.06. COMPOUNDING. (a) A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 38.07. ESCAPE. (a) A person arrested for, charged with, or convicted of an offense commits an offense if he escapes from custody.

(b) Except as provided in Subsections (c) and (d) of this section, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony; or

(2) is confined in a penal institution.

(d) An offense under this section is a felony of the second degree if the actor used or threatened to use a deadly weapon to effect his escape.

Sec. 38.08. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of an institution that is responsible for maintaining persons in custody commits an offense if he

intentionally, knowingly, or recklessly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he intentionally or knowingly causes or facilitates the escape of one who is in custody pursuant to:

(1) an allegation or adjudication of delinquency; or

(2) a statutory procedure authorizing involuntary commitment for mental illness, alcoholism, or drug addiction.

(c) Except as provided in Subsection (d) of this section, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if:

(1) the person in custody was under arrest for, charged with or convicted of a felony;

(2) the person in custody was confined in a penal institution;

(3) the actor used or threatened to use a deadly weapon to effect the escape; or

(4) the offense under Subsection (a) of this section was committed intentionally.

Sec. 38.09. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.07 (Escape) or 38.08 (Facilitating Escape) of this code that the custody was unlawful.

Sec. 38.10. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces

1 into a penal institution, or provides an inmate with, a deadly
2 weapon or anything that may be useful for escape.
3 (b) An offense under this section is a felony of the third
4 degree unless the actor introduced or provided a deadly weapon,
5 in which event the offense is a felony of the second degree.
6 Sec. 38.11. BAIL JUMPING AND FAILURE TO APPEAR. (a) A
7 person lawfully released from custody, with or without bail, on
8 condition that he subsequently appear commits an offense if he
9 intentionally or knowingly fails to appear in accordance with the
10 terms of his release.
11 (b) This section does not apply to appearances incident
12 to probation or parole.
13 (c) It is a defense to prosecution under this section that
14 the actor had a reasonable excuse for his failure to appear in
15 accordance with the terms of his release.
16 (d) Except as provided in Subsections (e) and (f) of this
17 section, an offense under this section is a Class A misdemeanor.
18 (e) An offense under this section is a Class C misdemeanor
19 if the offense for which the actor's appearance was required is
20 punishable by fine only.
21 (f) An offense under this section is a felony of the third
22 degree if the offense for which the actor's appearance was required
23 is classified as a felony.
24 Sec. 38.12. BARRATRY. (a) A person commits an offense
25 if, with intent to obtain a benefit for himself or to harm another
26 he:

(1) institutes any suit or claim in which he knows he has no interest;

(2) institutes any suit or claim that he knows is false;

(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or

(4) procures another to solicit for him employment to prosecute or defend a suit or to collect a claim.

(b) An offense under this section is a Class A misdemeanor.

Sec. 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.

(a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

CHAPTER 39. ABUSE OF OFFICE

Section

39.01. Official Misconduct.
39.02. Official Oppression.
39.03. Misuse of Official Information.

CHAPTER 39. ABUSE OF OFFICE

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;

(2) commits an act under color of his office or employment that exceeds his official power;

(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;

(4) violates a law relating to his office or employment; or

(5) takes or misapplies any thing of value belonging to the government that may have come into his custody or possession by virtue of his employment, or secretes it with intent to take or misapply it, or pays or delivers it to any person knowing that such person is not entitled to receive it.

(b) For purposes of Subsection (a)(2) of this section, 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 Subsections (a)(1) through (a)(4) of this section is a Class A misdemeanor. An offense under Subsection (a)(5) of this section is a felony of the third degree.

Sec. 39.02. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) An offense under this section is a Class A misdemeanor.

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, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; or

(2) speculates or aids another to speculate on the basis of the information.

(b) An offense under this section is a 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.

1 42.03. Obstructing Highway or Other Passageway.
2 42.04. Defense When Conduct Consists of Speech or Other
3 Expression.
4 42.05. Disrupting Meeting or Procession.
5 42.06. False Alarm or Report.
6 42.07. Harassment.
7 42.08. Public Intoxication.
8 42.09. Desecration of Venerated Object.
9 42.10. Abuse of Corpse.
10 42.11. Cruelty to Animals.
11 42.12. Shooting on Public Road.
12 TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY
13 CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES
14 Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an
15 offense if he intentionally or knowingly:
16 (1) uses abusive, indecent, profane, or vulgar
17 language in a public place, and the language by its very utterance
18 tends to incite an immediate breach of the peace;
19 (2) makes an offensive gesture or display in a public
20 place, and the gesture or display tends to incite an immediate
21 breach of the peace;
22 (3) creates, by chemical means, a noxious and
23 unreasonable odor in a public place;
24 (4) abuses or threatens a person in a public place
25 in an obviously offensive manner;
26 (5) makes unreasonable noise in a public place or

in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) discharges a firearm in a public place;

(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm; or

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) of this section that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor.

Sec. 42.02. RIOT.

(a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) of this section, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) of this section, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(a) A person commits an offense if, without legal privilege

or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1) of this subsection; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION. (a) If conduct that would otherwise violate Section 42.01 (a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) of this code consists of speech or other communication,

of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01 (a)(5) or 42.03 of this code:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

Sec. 42.05. DISRUPTING MEETING OR PROCESSION. (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

Sec. 42.06. FALSE ALARM OR REPORT. (a) A person commits an offense if he knowingly initiates, communicates, circulates,

or broadcasts a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if he intentionally:

(1) communicates by telephone or in writing in vulgar, profane, obscene, or indecent language or in a coarse and offensive manner and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient or intends to annoy or alarm the recipient;

(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 intends to annoy or alarm the recipient; or

(3) places one or more telephone calls anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication and by this action intentionally, knowingly, or recklessly annoys or alarms

the recipient or intends to annoy or alarm the recipient.

(b) For purposes of Subsection (a)(3) of this section, 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 B misdemeanor.

Sec. 42.08. PUBLIC INTOXICATION. (a) An individual commits an offense if he appears in a public place under the influence of alcohol or any other substance, to the degree that he may endanger himself or another.

(b) A peace officer or magistrate may release from custody an individual arrested under this section if he believes imprisonment is unnecessary for the protection of the individual or others.

(c) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes by a licensed physician.

(d) An offense under this section is a Class C misdemeanor.

Sec. 42.09. DESECRATION OF VENERATED OBJECT. (a) A person commits an offense if he intentionally or knowingly desecrates:

(1) a public monument;

(2) a place of worship or burial; or

(3) a state or national flag.

(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

(c) An offense under this section is a Class A misdemeanor.

Sec. 42.10. ABUSE OF CORPSE. (a) A person commits an offense if, not authorized by law, he intentionally or knowingly:

(1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;

(2) conceals a human corpse knowing it to be illegally disinterred;

(3) sells or buys a human corpse or in any way traffics in a human corpse; or

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.

(b) An offense under this section is a Class A misdemeanor.

Sec. 42.11. CRUELTY TO ANIMALS. (a) A person commits an offense if he intentionally or knowingly:

(1) tortures or seriously overworks an animal;

(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;

(3) abandons unreasonably an animal in his custody;

(4) transports or confines an animal in a cruel manner;

(5) kills, injures, or administers poison to an animal belonging to another without legal authority or the owner's effective consent; or

(6) causes one animal to fight with another.

(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.

(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.

(d) An offense under this section is a Class A misdemeanor.

Sec. 42.12. SHOOTING ON PUBLIC ROAD. (a) A person commits an offense if he intentionally or knowingly shoots or discharges any gun, pistol, or firearm on, along, or across a public road.

(b) An offense under this section is a Class C misdemeanor.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

Section

43.01. Definitions.
43.02. Prostitution.
43.03. Promotion of Prostitution.
43.04. Aggravated Promotion of Prostitution.
43.05. Compelling Prostitution.
43.06. Accomplice Witness: Testimony and Immunity.
[Sections 43.07-43.20 reserved for expansion]

SUBCHAPTER B. OBSCENITY

43.21. Definitions.
43.22. Obscene Display or Distribution.

43.23. Commercial Obscenity.

43.24. Sale, Distribution, or Display of Harmful Material to Minor.

CHAPTER 43. PUBLIC DECENCY

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. DEFINITIONS. In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 of this code.

(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) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct in return for a fee payable to the actor; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(2) of

this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class C misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class B misdemeanor.

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he knowingly 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) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

Sec. 43.06. ACCOMPLICE WITNESS: TESTIMONY AND IMMUNITY.

(a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Sections 43.07-43.20 reserved for expansion]

SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITIONS. In this subchapter:

(1) "Obscene" means having as a whole a dominant theme that:

(A) appeals to a prurient interest in sex, nudity, or excretion;

(B) is patently offensive because it affronts contemporary community standards relating to the description or representation of sex, nudity, or excretion; and

(C) is utterly without redeeming social value.

(2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing,

photograph, motion picture, or other pictorial representation; a statue or other figure; a recording, transcription, or mechanical, chemical, or electrical reproduction; or other article, equipment, or machine.

(3) "Prurient interest" means a shameful or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. COMMERCIAL OBSCENITY. (a) A person commits an offense if, knowing the content of the material:

(1) he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or

commercial exhibition any obscene material;

(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; or

(3) he hires, employs, or otherwise uses a person under the age of 17 years to achieve any of the purposes set out in Subdivisions (1) and (2) of this subsection.

(b) It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

(c) An offense under this section is a Class B misdemeanor unless committed under Subsection (a)(3) of this section, in which event it is a Class A misdemeanor.

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

(1) "Minor" means an individual younger than 17 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value

for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Section

46.01. Chapter Definitions.

46.02. Unlawful Carrying Weapons.

46.03. Non-Applicable.

46.04. Places Weapons Prohibited.

46.05. Unlawful Possession of Firearm by Felon.

46.06. Prohibited Weapons.

46.07. Unlawful Transfer of Firearm.

46.08. Interstate Purchase.

CHAPTER 46. WEAPONS

Sec. 46.01. CHAPTER DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive, incendiary, or poison gas bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, and includes a device principally designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device

readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Illegal knife" means a:

(A) knife with a blade over five and one-half inches;

(B) throw-blade knife;

(C) dagger, including but not limited to a dirk, stiletto, and poniard;

(D) bowie knife;

(E) sword; or

(F) spear.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable

of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.

Sec. 46.03. NON-APPLICABLE. The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties

as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

(2) on his own premises or premises under his control;

(3) traveling; or

(4) engaging in lawful hunting or fishing or other lawful sporting activity.

Sec. 46.04. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if, with a firearm, he intentionally, knowingly, or recklessly goes:

(1) on the premises of a school or an educational institution, whether public or private, unless pursuant to written regulations or written authorization of the institution; or

(2) on the premises of a polling place on the day of an election.

(b) It is a defense to prosecution under this section that the actor was in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard.

(c) An offense under this section is a Class A misdemeanor.

Sec. 46.05. UNLAWFUL POSSESSION OF FIREARM BY FELON.

(a) A person who has been convicted of a felony involving an act of violence or threatened violence to a person or property commits an offense if he possesses a firearm away from the premises where he lives.

(b) An offense under this section is a felony of the third degree.

Sec. 46.06. PROHIBITED WEAPONS. (a) A person commits an

offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event it is a felony of the third degree.

Sec. 46.07. UNLAWFUL TRANSFER OF FIREARM. (a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to

be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm; or

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) of this section that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

Sec. 46.08. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922 (b)(3)(A), Public Law 90-618, 90th Congress.

CHAPTER 47. GAMBLING

Section

47.01. Definitions.

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CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement that, dependent on chance even though accompanied by some skill, one stands to win or lose something of value. A bet does not include:

(A) contracts of indemnity of guaranty, or life, health, property, or accident insurance; or

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest.

(2) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, the receiving, holding, recording, or forwarding of bets or offers to bet, or the conducting of a lottery or the playing of gambling devices.

(3) "Gambling device" means any mechanical contrivance

that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(4) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered and designed to enhance the actor's chances of winning.

(5) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(6) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(7) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office

buildings, transportation facilities, and shops.

(8) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class C misdemeanor.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an offense if he intentionally or knowingly does any of the following acts:

(1) operates or participates in the earnings of a

gambling place;

(2) receives, records, or forwards a bet or offer to bet;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a felony of the third degree.

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a felony of the third degree.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) An offense under this section is a felony of the third degree.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE OR EQUIPMENT.

(a) A person commits an offense if he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such

device.

(c) An offense under this section is a felony of the third degree.

Sec. 47.07. POSSESSION OF GAMBLING PARAPHERNALIA.

(a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(b) An offense under this section is a Class A misdemeanor.

Sec. 47.08. EVIDENCE. (a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.

(b) In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

Sec. 47.09. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Sec. 2. CONFORMING AMENDMENTS. (A) The following articles of the Code of Criminal Procedure, 1965, are amended to read as follows:

"Article 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. <u>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.</u>

"Article 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.' <u>Any witness who divulges</u>

any matter about which he is interrogated, or any proceedings of the grand jury had in his presence, other than when required to give evidence thereof in due course, shall be liable to a fine as for contempt of court, not exceeding $500, and to imprisonment not exceeding six months.

"Article 21.14. PERJURY AND AGGRAVATED PERJURY [~~FALSE SWEARING~~]

"An indictment for perjury or aggravated perjury [~~false swearing~~] 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 pleadings, 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 [~~officer~~] by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or aggravated perjury [~~false-swearing~~] is assigned.

"Article 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 [~~negligently~~] or with criminal negligence in the commission [~~committing~~] 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 [~~negligently~~] or with criminal negligence.

"Article 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, as defined in Chapter 3 of the Penal Code.

"(b) A count may contain as many separate paragraphs charging the same offense as 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.

"[~~May-contain-several-counts-but-only-one-offense~~

"~~An-indictment,-information-or-complaint-may-contain-as many-counts-charging-the-same-offense-as-the-attorney-who-prepares it,-acting-in-good-faith,-may-think-necessary-to-insert,-but-may not-charge-more-than-one-offense.--An-indictment-or-information shall-be-sufficient-if-any-one-of-its-counts-be-sufficient.~~]

"Article 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 [sane], and is uninfluenced by any consideration of fear, or by any persuasion, or delusive hope of pardon, prompting him to confess his guilt.

"Article 27.02. DEFENDANT'S PLEADINGS

"The pleadings and motions of the defendant shall be [On the part of the defendant, the following are the only pleadings]:

"(1) A [1. The] motion to set aside or an exception to an [the] indictment or information for some matter of form or substance;

"(2) [2.] A special plea as provided in Article 27.05 of this code [setting forth one or more facts as cause why the defendant ought not be tried upon the accusation presented against him];

"[(3) An exception to the indictment or information for some matter of form or substance;]

"(3) [4.] A plea of guilty;

"(4) [5.] A plea of not guilty;

"(5) [6.] A plea of nolo contendere, the [. The] legal effect of which [such plea] shall be the same as that of a plea of guilty, except that such [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;

"(6) An [7. Defendant's] application for probation, if any [and];

"(7) An [~~8. Defendant's~~] election, if any, to have the jury assess the punishment if he is found guilty; and [~~7.~~]

"(8) Any other motions or pleadings that are by law permitted to be filed.

"Article 27.05. DEFENDANT'S SPECIAL PLEA [~~SPECIAL PLEAS FOR DEFENDANT~~]

"A defendant's [~~The~~] only special plea is that he has already been prosecuted for the same or a different offense arising out of the same criminal episode that was or should have been consolidated into one trial, and that the former prosecution [~~pleas which can be heard for the defendant are~~]:

"(1) resulted in acquittal;

"[~~4. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense, and~~]

"(2) resulted in conviction;

"[~~2. That he has been before acquitted of the accusation against him in a court of competent jurisdiction, whether the acquittal was regular or irregular,~~]/

"(3) was improperly terminated; 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.

"Article 28.01. PRE-TRIAL

"Section 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

"(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

"(2) Pleadings of the defendant;

"(3) Special pleas, if any;

"(4) Exceptions to the form or substance of the indictment or information;

"(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

"(6) Motions to suppress evidence--When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

"(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of

venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury; [~~and~~]

"(8) Discovery; and[.]

"(9) Entrapment.

"Section 2. When a criminal case is set for such pre-trial hearing, the defendant shall have five days after notice of setting in which to file his motions, pleadings and exceptions; and any such preliminary matters not raised and filed within the time allowed will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. The record made at such pre-trial hearing, the rulings of the court and the exceptions and objections thereto shall become a part of the trial record of the case upon its merits.

"Section 3. The notice mentioned in Section 2 above shall be sufficient if given in any one of the following ways:

"(1) By announcement made by the court in open court in the presence of the defendant or his attorney of record;

"(2) By personal service upon the defendant or his attorney of record;

"(3) By mail to either the defendant or his attorney of record deposited by the clerk in the mail at least six days prior to the date set for hearing. If the defendant has no attorney of record such notice shall be addressed to defendant at the address shown on his bond, if the bond shows such an address, and if not, it may be addressed to one of the sureties on his bond.

If the envelope containing the notice is properly addressed, stamped and mailed, the state will not be required to show that it was received.

"Article 29.01. BY OPERATION OF LAW

"Criminal actions are continued by operation of law if:

"(1) The individual defendant [~~the accused~~] has not been arrested;

"(2) A defendant corporation or association has not been served with summons; or [~~if~~]

"(3) There [~~there~~] is not sufficient time for trial at that term of court.

"Article 36.03. WITNESSES 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.

"Article 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.

"Article 37.07. VERDICT MUST BE GENERAL; SEPARATE HEARING ON PROPER PUNISHMENT

"Section 1. (a) The verdict in every criminal action must be general. When there are special pleas on which a jury is to find they must say in their verdict that the allegations in such pleas are true or untrue.

"(b) If the plea is not guilty, they must find that the defendant is either guilty or not guilty, and, except as provided in Section 2, they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty.

"(c) If the charging instrument contains more than one count or if two or more offenses are consolidated for trial pursuant to Chapter 3 of the Penal Code, the jury shall be instructed to return a finding of guilty or not guilty in a separate verdict as to each count and offense submitted to them.

"Section 2. [~~Alternate procedure~~] (a) In all criminal cases, other than misdemeanor cases of which the justice court or municipal [~~corporation~~] court has jurisdiction, which are tried before a jury on a plea of not guilty, the judge shall, before argument begins, first submit to the jury the issue of guilt or innocence of the defendant of the offense or offenses charged, without authorizing the jury to pass upon the punishment to be imposed.

"(b) If a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) [~~in capital cases where the State has made it known in writing prior to trial that it will seek the death penalty, (2)~~] in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) [~~(3)~~] in other cases where the defendant so elects in writing at the time he enters his plea in open court, the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

"(c) Punishment shall be assessed on each count on which a finding of guilty has been returned.

"Section 3. Evidence of prior criminal record in all criminal cases after a finding of guilty

"(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

"(b) After the introduction of such evidence has been concluded, and if the jury has the responsibility of assessing

the punishment, the court shall give such additional written instructions as may be necessary and the order of procedure and the rules governing the conduct of the trial shall be the same as are applicable on the issue of guilt or innocence.

"(c) In cases where the matter of punishment is referred to the jury, the verdict shall not be complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. In the event the jury shall fail to agree, a mistrial shall be declared, the jury shall be discharged, and no jeopardy shall attach.

"(d) When the judge assesses the punishment, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

"(e) Nothing herein contained shall be construed as affecting the admissibility of extraneous offenses on the question of guilt or innocence.

"Article 37.08. CONVICTION OF LESSER INCLUDED OFFENSE [~~OFFENSES OF DIFFERENT DEGREE~~]

"In a prosecution for an offense with lesser included [~~including lower~~] offenses, the jury may find the defendant not guilty of the greater [~~higher~~] offense, but guilty of any lesser included [~~lower~~] offense [~~included~~].

"Article 37.09. LESSER INCLUDED OFFENSE [~~OFFENSES CONSISTING OF DEGREES~~]

"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;

"(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;

"(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.

"[~~The following offenses include different degrees:~~

"~~1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder;~~

"~~2. An assault with intent to commit any felony, which includes all assaults of an inferior degree;~~

"~~3. Maiming, which includes aggravated and simple assault and battery;~~

"~~4. Burglary, which includes every species of house-breaking and theft or other felony when charged in the indictment in connection with the burglary;~~

"~~5. Riot, which includes unlawful assembly;~~

"~~6. Kidnapping or abduction, which includes false imprisonment; and~~

"~~7. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt is a violation of the penal law.~~]

"Article 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 [~~such~~] 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 16 [~~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. [~~an offense defined in Chapter Three of the Penal Code of Texas pertaining to wife or child desertion or wilful failure or refusal to support his or her minor children.~~]

"Article 38.18. PERJURY AND AGGRAVATED PERJURY [~~FALSE SWEARING~~]

"(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) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

"[~~In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court.~~]

"Article 40.03. GROUNDS FOR NEW TRIAL IN FELONY

"New trials, in cases of felony, shall be granted the defendant for the following causes, and for no other:

"(1) [~~1.~~] Where the defendant is an individual and has been tried in his absence, except as otherwise provided in this code, or has been denied counsel;

"(2) [~~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) [~~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) [~~4.~~] Where a juror has received a bribe to

convict, or has been guilty of any other corrupt conduct;

"(5) [~~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) [~~6.~~] Where new evidence [~~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) [~~7.~~] Where the jury, after having retired to deliberate upon a case, has received other evidence [~~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 consumption [~~drinking~~] of alcoholic beverage [~~liquor~~] by a juror shall not be sufficient ground for a new trial;

"(8) [~~8.~~] Where, from the misconduct of the jury, the court is of the 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; and

"(9) [~~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) [~~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.

"Article 43.01. DISCHARGING JUDGMENT FOR FINE

"(a) When the [~~judgment and~~] sentence against an individual [~~a~~] defendant is for fine and costs, he shall be discharged from the same:

"(1) when [~~1.--When~~] the amount thereof has been fully paid; or

"(2) when [~~2.--When~~] remitted by the proper authority; or

"(3) when [~~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.

"Article 43.03. PAYMENT OF FINE [~~PAY-OR-JAIL~~]

"(a) If a defendant is sentenced to pay [~~When a judgment and sentence have been rendered against a defendant for~~] a fine or [~~and~~] 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.

"Article 45.32. THE ONLY SPECIAL PLEA

"The only special pleas [~~plea~~] allowed are those defined in Article 27.05 of this code [~~is that of former acquittal or conviction for the same offense~~].

"Article 49.16. COMMITMENT OF HOMICIDE SUSPECT [~~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 [~~an accomplice or accessory~~] 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.

"Article 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 [~~an accomplice or accessory~~] 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.

"Article 50.03. VERDICT IN FIRE INQUEST

"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, [~~either as principal or accessory,~~] and in what manner. If such a jury is unable to so ascertain, it shall find and certify accordingly."

(B) Chapter 12, Code of Criminal Procedure, 1965, is amended to read as follows:

"CHAPTER TWELVE

"LIMITATION

"Article 12.01. FELONIES [~~TREASON; THEFT OR CONVERSION BY EXECUTOR, ADMINISTRATOR OR GUARDIAN; FORGERY~~]

"Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

"(1) no limitation: murder and manslaughter; [~~An indictment for the following offenses may be presented within ten years from the time of the commission of the offense, and not afterward:~~

"~~1. treason;~~]

"(2) ten years from the date of the commission of the offense:

"(A) [~~2.~~] theft [~~or conversion~~] 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) [~~3.~~] 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.

"[~~Article 12.02. RAPE~~

"~~An indictment for rape may be presented within one year, and not afterward.~~

"~~Article 12.03. THEFT, ETC., FIVE YEARS~~

"~~An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward.~~

"~~Article 12.04. OTHER FELONIES~~

"~~An indictment for any other felony may be presented within three years from the commission of the offense, and not afterward, except murder, for which an indictment may be presented at any time.~~]

"Article 12.02. MISDEMEANORS [~~12.05. MISDEMEANORS, TWO YEARS~~]

"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.

"Article 12.03. AGGRAVATED OFFENSES, ATTEMPT, CONSPIRACY, SOLICITATION

"(a) The limitation period for criminal attempt is the same as that of the offense attempted.

"(b) The limitation period for criminal conspiracy is the same as that of the most serious offense that is the object of the conspiracy.

"(c) The limitation period for criminal solicitation is the same as that of the felony solicited.

"(d) Any offense that bears the title 'aggravated' shall carry the same limitation period as the primary crime.

"Article 12.04. [~~42.06~~] 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.

"Article 12.05. [~~42.07~~] ABSENCE FROM STATE AND TIME OF PENDENCY OF INDICTMENT, ETC., NOT COMPUTED

"(a) [~~4.~~] The time during which the accused is absent from the state shall not be computed in the period of limitation.

"(b) [~~2.~~] The time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation.

"(c) [~~3.~~] 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.

"Article 12.06. [~~42.08~~] 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.

"Article 12.07. [~~42.09~~] AN INFORMATION IS 'PRESENTED,' WHEN

"An information is considered as 'presented,' when it has

been filed by the proper officer in the proper court."

(C) Chapter 13, Code of Criminal Procedure, 1965, is amended to read as follows:

"CHAPTER THIRTEEN

"VENUE

"Article 13.01. OFFENSES [~~NOT~~] COMMITTED OUTSIDE THIS [~~IN THE~~] STATE

"Offenses [~~Prosecutions for offenses~~] committed wholly or in part outside [~~without, and made punishable by law within~~] this State, under circumstances that give this State jurisdiction to prosecute the offender, may be prosecuted [~~begun and carried on~~] in any county in which the offender is found or in any county in which an element of the offense occurs.

"Article 13.02. FORGERY

"Forgery may be prosecuted in any county where the writing [~~written instrument~~] 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. In addition, a [~~A~~] 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.

"[~~Article 13.03. COUNTERFEITING~~

"~~Counterfeiting may be prosecuted in any county where the~~

~~offense-was-committed,-or-where-the-counterfeit-coin-was-passed, or-attempted-to-be-passed.~~]

"Article 13.03. PERJURY [~~13.04.--PERJURY-AND-FALSE SWEARING~~]

"Perjury and aggravated perjury [~~false-swearing~~] may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used.

"Article 13.04. [~~13.05~~] ON THE BOUNDARY OF [~~TWO~~] COUNTIES

"An offense committed on the boundaries [~~boundary~~] of [~~any~~] two or more counties, or within four hundred yards thereof, may be prosecuted and punished in any one of such counties [~~either county~~].

"Article 13.05. CRIMINAL HOMICIDE COMMITTED OUTSIDE THIS STATE

"The offense of criminal homicide committed wholly or in part outside 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.

"[~~Article-13.06.--PERSON-DYING-OUT-OF-THE-STATE~~

"~~If-any-person,-being-at-the-time-within-this-State,-shall inflict-upon-another,-also-within-this-State,-an-injury-of-which such-person-afterward-dies-without-the-limits-of-this-State,-the person-so-offending-shall-be-liable-to-prosecution-in-the-county where-the-injury-was-inflicted.~~

"~~Article 13.07 PERSON WITHIN THE STATE INFLICTING INJURY ON ANOTHER OUT OF THE STATE~~

"~~If a person, being at the time within this State, shall inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted.~~

"~~Article 13.08 PERSON WITHOUT THE STATE INFLICTING AN INJURY ON ONE WITHIN~~

"~~If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies.~~]

"Article 13.06. [~~13.09~~] 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.

"Article 13.07. [~~13.10~~] 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.

"[~~Article 13.11 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.~~]

"Article 13.08. [~~13.12~~] THEFT

"Where property is stolen in one county and removed [~~carried off~~] by the offender to another county, the offender [~~he~~] may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same [~~carried it~~].

"Article 13.09. [~~13.13~~] HINDERING SECURED CREDITORS [~~MORTGAGED PROPERTY~~]

"If secured [~~When mortgaged~~] 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 [~~lien or it~~] is filed [~~registered~~].

"[~~Article 13.14 ACCOMPLICES AND ACCESSORIES TO THEFT~~

"~~Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice, or accessory to the offense.~~

"~~Article 13.15 RECEIVING AND CONCEALING STOLEN PROPERTY~~

"~~Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried~~

~~by the person stealing the same, or in any county where the same may have been received or concealed by the offender.~~

"~~Article 13.16. BY COMMISSIONER OF DEEDS~~

"~~Offenses committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State.~~]

"Article 13.10. PERSON ACTING UNDER AUTHORITY OF THIS STATE

"An offense committed outside this State by any officer acting under the authority of this State, under circumstances that give this state jurisdiction to prosecute the offender, may be prosecuted in the county of his residence or, if a nonresident of this State, in Travis County.

"Article 13.11. [~~13.17~~] 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.

"[~~Article 13.18. EMBEZZLEMENT~~

"~~Embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it.~~]

"Article 13.12. [~~13.19~~] FALSE IMPRISONMENT AND[~~,~~] KIDNAPPING [~~AND ABDUCTION~~]

"Venue for false imprisonment and kidnapping is in [~~and abduction belongs~~] either [~~to~~] the county in which the offense

was committed, or in [~~to~~] any county through, into or out of which the person falsely imprisoned or[~~,~~] kidnapped [~~or taken in such manner as to constitute abduction~~] may have been taken [~~carried~~].

"Article 13.13. [~~43.20~~] CONSPIRACY

"Criminal conspiracy [~~Conspiracy~~] may be prosecuted in the county where the conspiracy was entered into, [~~or~~] in the county where the conspiracy [~~same~~] was agreed to be executed, or in any county in which one or more of the conspirators does any act to effect an object of the conspiracy. If a conspiracy was entered into outside 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. [~~, and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.~~]

"Article 13.14. [~~43.21~~] 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.

"Article 13.15. [~~43.22~~] 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 [~~this~~] court be in session, but the grand jury has been discharged, he shall immediately recall the [~~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.

"Article 13.16. CRIMINAL NONSUPPORT

"Criminal nonsupport may be prosecuted in the county where the offended spouse or child is residing at the time the information or indictment is presented.

"[~~Article 13.23 CONVICTION OR ACQUITTAL IN ANOTHER STATE~~

"~~When an act has been committed out of this State by an inhabitant thereof, and such act is an offence by the laws of this State, and is also an offence by the laws of the place where the same was done, a conviction or acquittal of the offender,~~

~~under the laws of the place where the offense was committed, is a bar to the prosecution in this State.~~

"~~Article 13.24. JURISDICTION IN DIFFERENT COUNTIES~~

"~~Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county.~~]

"Article 13.17. [~~13.25~~] PROOF OF VENUE

"In all cases mentioned in this Chapter, the indictment or information, or any pleading [~~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 by the preponderance of the evidence that by reason of the facts in the case, the county where such prosecution is carried on has venue [~~jurisdiction~~].

"Article 13.18. [~~13.26~~] OTHER OFFENSES

"If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed.

"Article 13.19. WHERE VENUE CANNOT BE DETERMINED

"If an offense has been committed within the state and it cannot readily be determined within which county or counties the commission took place, trial may be held in the county in which the defendant resides, in the county in which he is apprehended, or in the county to which he is extradited."

(D) The Code of Criminal Procedure, 1965, is amended by adding Chapter 17A, 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.

"Article 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 government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

"(3) 'High managerial agent' means:

"(A) an officer of a corporation or association;

"(B) a partner in a partnership; or

"(C) an agent of a corporation or association who has duties of such responsibility that his conduct may reasonably be assumed to represent the policy of the corporation or association.

"(4) 'Person,' 'he,' and 'him' include corporation and association.

"Article 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.

"Article 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 20 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 30 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.

"Article 17A.04. SERVICE ON CORPORATION

"(a) Except as provided in Paragraph (d) of this article, 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) of this article, 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 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) of this article together with the return receipt.

"(d) The method of service on a corporation regulated under the Insurance Code is governed by that code.

"Article 17A.05. SERVICE ON ASSOCIATION

"(a) Except as provided in Paragraph (b) of this article, 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.

"Article 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 10 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) 10 full days must elapse after the day of

appearance before the corporation or association may be tried.

"Article 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.

"Article 17A.08. PROBATION

"The benefits of the adult probation laws shall not be available to corporations and associations.

"Article 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."

(E) Chapter 18, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"CHAPTER EIGHTEEN

"SEARCH WARRANTS

Article

18.01. Search Warrant.
18.02. Grounds for Issuance.
18.03. Search Warrant May Order Arrest.
18.04. Contents of Warrant.
18.05. Warrants for Fire Marshals and Health Officers.
18.06. Warrant Executed without Delay.
18.07. Days Allowed for Warrant to Run.
18.08. Power of Officer Executing Warrant.
18.09. Shall Seize Accused and Property.
18.10. How Return Made.
18.11. Custody of Property Found.

18.12. Magistrate Shall Investigate.

18.13. Shall Discharge Defendant.

18.14. Examining Trial.

18.15. Certify Record to Proper Court.

18.16. Preventing Consequences of Theft.

18.17. Disposition of Abandoned or Unclaimed Property.

18.18. Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument.

18.19. Disposition of Certain Weapons.

"Article 18.01. SEARCH WARRANT

"(a) A 'search warrant' is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate.

"(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested.

"Article 18.02. GROUNDS FOR ISSUANCE

"A search warrant may be issued to search for and seize:

"(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

"(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

"(3) arms and munitions kept or prepared for the purpose of insurrection or riot;

"(4) weapons prohibited by the Penal Code;

"(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

"(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

"(7) drugs kept, prepared, or manufactured in violation of the laws of this state;

"(8) any property the possession of which is prohibited by law;

"(9) implements or instruments used in the commission of a crime.

"Article 18.03. SEARCH WARRANT MAY ORDER ARREST

"If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

"Article 18.04. CONTENTS OF WARRANT

"A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

"(1) that it run in the name of 'The State of Texas';

"(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the

person, place, or thing to be searched;

"(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named; and

"(4) that it be dated and signed by the magistrate.

"Article 18.05. WARRANTS FOR FIRE MARSHALS AND HEALTH OFFICERS

"(a) A search warrant may be issued to the fire marshal or health officer of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or a violation of any fire or health regulation, statute, or ordinance.

"(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation is present in the premises sought to be inspected.

"(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

"(1) the age and general condition of the premises;

"(2) previous violations or hazards found present in the premises;

"(3) the type of premises;

"(4) the purposes for which the premises are used; and

"(5) the presence of hazards or violations in and

1 the general condition of premises near the premises sought to be
2 inspected.
3 "Article 18.06. EXECUTION OF WARRANTS
4 "(a) A peace officer to whom a search warrant is delivered
5 shall execute it without delay and forthwith return it to the
6 proper magistrate. It must be executed within three days from
7 the time of its issuance, and shall be executed within a shorter
8 period if so directed in the warrant by the magistrate.
9 "(b) The officer shall, upon going to the place ordered
10 to be searched or before seizing any property for which he is
11 ordered to make the search, give notice of his purpose to the
12 person who has charge of or is an inmate of the place or who has
13 possession of the property described in the warrant.
14 "Article 18.07. DAYS ALLOWED FOR WARRANT TO RUN
15 "The time allowed for the execution of a search warrant
16 shall be three whole days, exclusive of the day of its issuance
17 and of the day of its execution. The magistrate issuing a search
18 warrant under the provisions of this chapter shall endorse on
19 such search warrant the date and hour of the issuance of the same.
20 "Article 18.08. POWER OF OFFICER EXECUTING WARRANT
21 "In the execution of a search warrant, the officer may call
22 to his aid any number of citizens in his county, who shall be
23 bound to aid in the execution of the same.
24 "Article 18.09. SHALL SEIZE ACCUSED AND PROPERTY
25 "When the property which the officer is directed to search
26 for and seize is found he shall take possession of the same and

carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate.

"Article 18.10. HOW RETURN MADE

"Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed and shall likewise deliver to the magistrate an inventory of the property taken in his possession under the warrant.

"Article 18.11. CUSTODY OF PROPERTY FOUND

"When a warrant has been issued to search a suspected place and there be found any property as alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate.

"Article 18.12. MAGISTRATE SHALL INVESTIGATE

"The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

"Article 18.13. 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 for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

"Article 18.14. EXAMINING TRIAL

"The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant.

"Article 18.15. CERTIFY RECORD TO PROPER COURT

"The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized.

"Article 18.16. PREVENTING CONSEQUENCES OF THEFT

"All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay.

"Article 18.17. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY

"(a) All unclaimed or abandoned personal property of every kind, except whiskey, wine and beer, seized by any state or county peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by

a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for sale to the purchasing agent of the county in which the property was seized. If the county has no purchasing agent, then such property shall be sold by the sheriff of the county.

"(b) The purchasing agent or sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within six months from the date of the notice such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(c) If the owner of such property is unknown or if the address of the owner is unknown, then the purchasing agent or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the county a notice containing a description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within six months from the date of the publication such property will be sold and the proceeds of such sale, after deducting the reasonable expense of keeping such property and the costs of the sale, placed in the county treasury.

"(d) The sale of any property hereunder shall be preceded by a notice published once at least three weeks prior to the date of such sale in a newspaper of general circulation in the county where the sale is to take place, stating the description of the property, the names of the owner if known, and the date and place that such sale will occur. If the purchasing agent or sheriff, as the case may be, shall consider any bid as insufficient, he need not sell such property but may decline such bid and reoffer such property for sale.

"(e) The real owner of any property sold shall have the right to file a claim to the proceeds of such sale with the commissioners court of the county in which the sale took place. If the claim is allowed by the commissioners court, the county treasurer shall pay the owner such funds as were paid into the treasury of the county as proceeds of the sale. If the claim is denied by the commissioners court or if said court fails to act upon such claim within 90 days, the claimant may sue the county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such county for the recovery of the proceeds of the sale.

"Article 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA, PROHIBITED WEAPON, CRIMINAL INSTRUMENT

"(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, or an offense involving a prohibited weapon,

the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, 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 gambling device or equipment, altered gambling equipment or gambling paraphernalia, 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 gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, or criminal instrument seized must appear before the magistrate on the 20th 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 gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, 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) of this article.

"(g) For purposes of this article:

"(1) 'criminal instrument' has the meaning defined in the Penal Code;

"(2) 'gambling device or equipment, altered gambling

equipment or gambling paraphernalia' has the meaning defined in the Penal Code;

"(3) 'prohibited weapon' has the meaning defined in the Penal Code.

"Article 18.19. 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 Chapter 46 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 Chapter 46, in which event Article 18.18 of this code applies; or

"(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

"(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same 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 court in which he was convicted. If the weapon is not requested within 60 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 Chapter 46 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 60 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 previously convicted under Penal Code Chapter 46; or

"(3) the weapon is one defined as a prohibited weapon under Penal Code Chapter 46.

"(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 Chapter 46, 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."

(F) The Revised Civil Statutes of Texas, 1925, as amended, are amended by adding Article 1d to read as follows:

"Article 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."

(G) Article 907, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 907. PROTECTING COMMERCE

"If at any time the movement of commerce by common carriers of this State or any of them is interfered with in violation of any of the provisions of Chapter 42 of the Penal Code [~~Chapter 10, Title 14, of the Penal Code~~], and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order to prevent such interference [~~in order that the movement of commerce may not be interfered with~~], forthwith issue his proclamations declaring such conditions to exist and describing the areas thus affected. [~~Each article of said Title of the Penal Code is made a part hereof.~~]"

(H) Section 8, Article 5765, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Section 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 [~~or criminally~~] for any act or acts done by them while in the discharge of their duty. When a suit [~~or proceeding~~] 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 [~~prosecuting or~~] instituting the suit [~~or proceeding~~] 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 non-suited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs."

(I) Article 4664, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 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 of any educational institution, or where persons habitually resort for the purpose of prostitution or to gamble as prohibited by the Penal Code, [~~gambling or for the purpose of prostitution,~~] is hereby declared to be a common nuisance. Any person who knowingly maintains [~~or assists in maintaining~~] such a place is guilty of maintaining a nuisance."

(J) Article 4667, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 4667. INJUNCTIONS TO ABATE PUBLIC NUISANCES [~~GAMING AND DISORDERLY 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 constitute a public nuisance and shall be enjoined at the suit of either the State or any citizen thereof:

"(1) [~~1.~~] For gambling, gambling promotion, or communicating gambling information prohibited by law; [~~gaming or keeping or exhibiting games prohibited by law.~~]

"(2) [~~2.~~] For the promotion or aggravated promotion of prostitution, or compelling prostitution; [~~keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.~~]

"(3) [~~3.~~] For the commercial manufacturing, commercial distribution, or commercial exhibition of obscene material; [~~carrying on bucket shops as defined in the Penal Code or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.~~]

"(4) For the commercial exhibition of live dances or exhibition which depicts real or simulated sexual intercourse or deviate sexual intercourse;

"(5) [~~4.~~] For the voluntary engaging in a fight between a man and a bull for money or other thing of value, or for any championship, or upon result of which any money or anything of value is bet or wagered, or to see which any admission fee is

charged either directly or indirectly, as prohibited by law [~~the Penal Code~~].

"(b) Any person who may use or be about to use, or who may be a party to [~~aid or abet another in~~] 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."

(K) Article 7.01 of the Texas Business Corporation Act is amended by adding Sections F and G to read as follows:

"F. When a corporation is convicted of a felony or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(L) Article 8.16 of the Texas Business Corporation Act is amended by adding Sections F and G to read as follows:

"F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(M) Article 7.01 of the Texas Non-Profit Business Corporation Act (Article 1396-7.01, Vernon's Texas Civil Statutes), is amended by adding Sections F and G to read as follows:

"F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

(N) Article 8.15 of the Texas Non-Profit Business Corporation Act (Article 1396-8.15, Vernon's Texas Civil Statutes), is amended by adding Sections F and G to read as follows:

"F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony 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 felonious conduct; and

"(2) To prevent future felonious 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."

Sec. 3. REPEALER. (a) The following laws are repealed:

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(b) The following articles of the Code of Criminal Procedure, 1965, as amended, are repealed: 2.24, 7.11, 7.12, 15.27, 22.01a, and 38.07.

(c) Chapter 5, Code of Criminal Procedure, 1965 (Art. 5.01 through 5.07), is repealed.

(d) The following sections of the Business & Commerce Code are repealed: 17.09, 17.10, 17.28, 25.01, 25.02, 25.03, and 35.19.

(e) Article 6876, Revised Civil Statutes of Texas, 1925, is repealed.

(f) Chapter 2, Section 14, Acts of the 61st Legislature, 2nd Called Session, 1969 (Article 6145--9, Section 14, Vernon's

Texas Civil Statutes), is repealed.

Sec. 4. EFFECTIVE DATE. This Act takes effect on January 1, 1974.

Sec. 5. DISPOSITION OF UNREPEALED ARTICLES. (a) The purpose of this section is to provide for transfer of articles of the Penal Code of Texas, 1925, which are not repealed by this Act to the civil statutes or other appropriate places within the framework of Texas statute law, without reenactment and without altering the meaning or effect of the unrepealed articles, so that when this Act takes effect there will be only one Texas Penal Code without the confusion that would result if remnants of the old Penal Code were allowed to continue to exist in that form in the statute books.

(b) In order to carry out the purpose of this section, the Texas Legislative Council shall prepare and submit to the secretary of state, for publication with the Acts of the 63rd Legislature, Regular Session, 1973, an appendix listing the unrepealed articles of the Penal Code of Texas, 1925, as amended, and prescribing for each unrepealed title, chapter, or article a new official citation. The council may include in the appendix any comments that may be helpful to users of the statute books.

(c) In order that the five-volume Vernon's Texas Penal Code Annotated may be completely replaced, the council in the appendix authorized by Subsection (b) of this section may also recommend transfer and reclassification of statutes which were not enacted as part of the Penal Code of Texas, 1925, but were

compiled as articles of Vernon's Texas Penal Code.

(d) Nothing in this section or done under its authority alters the meaning or effect of any statute of this state.

Sec. 6. SAVING PROVISIONS. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.

Sec. 7. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 8. EMERGENCY. The importance of this legislation and the crowded condition of the calendars 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 this rule is hereby suspended.

S.B. No. 34

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 34 passed the senate on May 16, 1973, by a viva-voce vote; May 24, 1973, senate concurred in house amendments by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 34 passed the house, with amendments, on May 23, 1973, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

S.B. No. 34

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 34 passed the senate on May 16, 1973, by a viva-voce vote; May 24, 1973, senate concurred in house amendments by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 34 passed the house, with amendments, on May 23, 1973, by a non-record vote.

Chief Clerk of the House

Approved:

6-14-73

Date

FILED IN THE OFFICE OF THE SECRETARY OF STATE
3:45pm
JUN 14 1973
Secretary of State

Signed

Governor

Jan 1, 1974

CODE

1-22-73 Filed with the Secretary of the Senate

JAN 24 1973 Read, referred to Committee on JURISPRUDENCE

Reported favorably.

MAY 9 1973 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

MAY 9 1973 Ordered not printed.

MAY 15 1973 Senate and Constitutional Rules to permit consideration suspended by unanimous consent. ~~[illegible] nays.~~

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of ___ yeas/ ___ nays.

MAY 15 1973 Read second time amended and ordered engrossed as amended ~~passed to third reading.~~

MAY 16 1973 Caption ordered amended to conform to body of bill.

MAY 16 1973 Senate and Constitutional 3-Day Rules suspended by vote of 28 yeas, 3 nays to place bill on third reading and final passage.

MAY 16 1973 Read third time and passed by a viva-voce vote. ~~[illegible]~~

OTHER ACTION:

Charles Schnabel
Secretary of the Senate

May 16, 1973 Engrossed

Sent to HOUSE

MAY 16 1973 Received from the Senate

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 16 1973
READ FIRST TIME AND REFERRED TO COMMITTEE ON
Criminal Jurisprudence

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 16 1973 REPORTED FAVORABLY SENT TO PRINTER

MAY 17 1973 Motion not to print SB No. 34 prevailed without objection

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 17 1973 ORDERED NOT PRINTED

Inside

AB 34

MAY 21 1973 Read Second Time, amended and passed to third reading by non record vote of _____ ayes, _____ noes.

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 21 1973 Constitutional Rule Requiring Bills To Be Read On Three Several Days ~~Suspended~~ Failed to Suspend By a Four - Fifths Vote.
Yeas 90 Nays 50

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 23 1973 Read third time amended and Passed by ~~following vote: yeas~~ non record vote ~~Nays~~

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

MAY 23 1973
Unanimous consent granted to amend caption of House Bill No. 34 to conform to body of bill.

RETURNED MAY 23 1973 ~~FROM HOUSE~~ as amended

MAY 24 1973
Senate concurred in House amendments by viva voce vote.