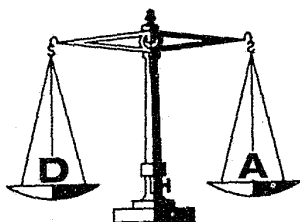


X A Summary of the
TEXAS PENAL CODE

**Written Especially For
Law Enforcement Officers**



55160

AROL VANCE
District Attorney
Travis County, Texas

**REVISED EDITION
1978**

NCJRS

MAR 5 1979

ACQUISITION



OFFICE OF THE
DISTRICT ATTORNEY
CAROL S. VANCE

Harris County Courthouse
HOUSTON, TEXAS 77002

THE TEXAS PENAL CODE

This publication is an outline of the Texas Penal Code which became effective January 1, 1974. It should not be a substitute for reference to the actual statutes. This guide points out the more common crimes, the statute numbers and the penalty classifications.

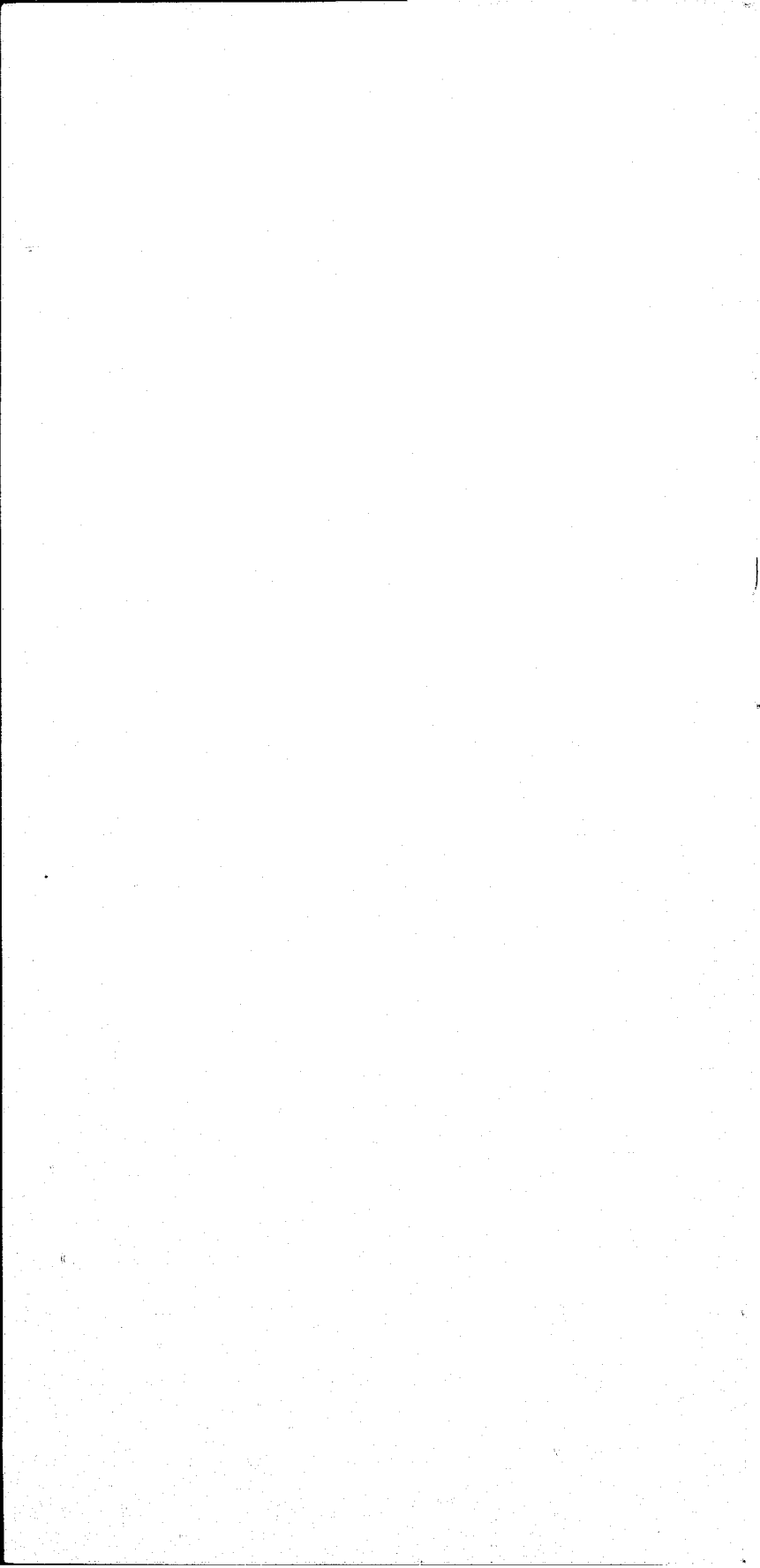
Besides the code, there are sections on major driving offenses, the drug laws (Controlled Substances Act), and our juvenile laws and procedures from the Family Code.

I hope this might be of assistance to all those involved in law enforcement.

Sincerely yours,

CAROL S. VANCE
District Attorney
Harris County, Texas

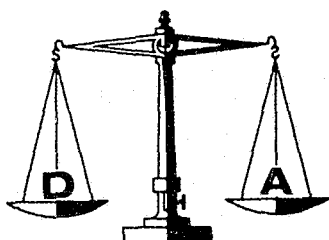
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INCLUDE LAWS EFFECTIVE
IN 1978.



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TEXAS PENAL CODE

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Law Enforcement Officers**



CAROL VANCE
District Attorney
Harris County, Texas

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TEXAS PENAL CODE

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

This chapter explains general terms such as the effects of the Code and definitions of commonly used terms such as "benefit," "bodily injury," "conduct," "consent," "harm," "possession," etc.

CHAPTER 2. BURDEN OF PROOF

This chapter explains burden of proof, "exceptions," "defenses," "affirmative defenses," and "presumptions." Generally, the prosecution must negate any "exceptions" found in a statute in the charging instrument. Any "defense" must be raised by the evidence. And where a statute mentions an "affirmative defense," the defense must prove this by a preponderance of the evidence as opposed to simply creating a reasonable doubt in order to obtain an acquittal.

CHAPTER 3. MULTIPLE PROSECUTIONS

This chapter explains multiple prosecutions and allows a defendant to be prosecuted for all offenses arising out of the same criminal episode (whether the offenses are alleged in the same or separate indictments). "Criminal episode" means the repeated commission of any property crime found within Title 7. Title 7 are the offenses against property.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Generally, all criminal offenses have two elements: an act and a culpable mental state. This chapter explains the four culpable mental states as follows:

- (1) **intentionally** — when it is his conscious objective or desire to engage in the conduct or cause the result;
- (2) **knowingly** — when he is aware of the nature of his conduct, or the circumstances surrounding his conduct, or that his conduct is reasonably certain to cause the result;
- (3) **recklessly** — when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances surrounding his conduct exist or the result will occur;

- (4) **criminal negligence** — gross deviation from the standard of care of an ordinary person.

It should be noted that criminal negligence requires "a gross deviation from the standard of care an ordinary person would exercise under all the circumstances . . ." as opposed to a requirement of ordinary negligence.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

This chapter defines ways in which one can be a party to an offense, replacing the traditional laws of principal and accomplice. A party is charged and punished as if he had committed the offense alone. One is a party if:

- (1) the offense is committed by his own conduct;
- (2) acting with the kind of culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense;
- (3) 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
- (4) having a statutory 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.

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. The fact that the co-conspirator had no intent to commit it is no defense if it should have been anticipated as a natural result of engaging in the conspiracy.

A corporation, as well as the individual who has the authority and acts for or with the corporation in perpetrating the crime, is criminally responsible for any criminal offense. Corporations are only subject to fines.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Section 8.01. Insanity — 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. The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Section 8.04. Intoxication — Voluntary intoxication is not a defense to a crime, and temporary insanity caused by intoxication only can be used in mitigation of punishment.

Section 8.06. Entrapment — This is a defense to prosecution only if the actor engaged in the conduct 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.

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.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

This chapter is especially important to the law enforcement officer and will be dealt with in detail.

All force is unlawful unless specifically justified by the provisions of the code.

Justification from criminal responsibility (as provided for in Chapter 9) speaks in terms of "force" and "deadly force" and specifies when each may be used. Therefore, if force or deadly force may be used, it must be specifically authorized. Our purpose in this pamphlet is to reduce to more simple terms the quite complex wording of the code. However, each reader should be familiar with the more technical wording of Chapter 9 for the details of justification.

Since the code speaks in terms of force and deadly force, these terms must be understood. "Deadly force" is force that is: (1) *intended* to cause, or (2) *known* to cause, or (3) from the manner of use or intended use is *capable* of causing death or serious bodily injury. Force, of course, is any degree of force less than deadly force.

When can force be legally used by police officers or by citizens?

When can deadly force be used?

How much force can be used and under what circumstances?

Under the Penal Code, confinement (Section 9.03) is treated the same as force and is justified to the same extent. Unlawful confinement, without justification, would cause a person to be guilty of false imprisonment. Also, if confinement is justified, the confinement must be terminated as soon as possible unless it is an arrest for an offense.

With regard to threats (Section 9.04), a threat of force is justified whenever the actual use of force is justified; however, one may *threaten* to use deadly force, and it not be considered the *use* of deadly force, as long as the purpose is limited to creating an impression that deadly force will be used if necessary.

Even if force, confinement, or threat of force is justified by law, if anyone *recklessly* injures or kills an innocent third person, then his act would not be justified by law (Section 9.05). For example, a police officer who shoots at a fleeing robber on a crowded street would be subject to prosecution for involuntary manslaughter for killing a bystander. Also, it should be noted that any justification under the Penal Code would not necessarily change any rights or remedies available in a civil lawsuit for damages (Section 9.06).

The defense of necessity (Section 9.22), conduct if the person involved believes such conduct is immediately necessary to avoid imminent harm. Thus, it ultimately requires the judge or jury to balance the urgency of avoiding harm against the harm actually done by violating the law. Under the defense of necessity, consider the following example. Suppose the driver of an automobile chooses to swerve and run over one person in order that his car would miss running over and killing several other persons. This might well be justifiable depending on all the facts and circumstances.

In the area of self defense (Sections 9.31 and 9.32), a person is now justified in using only that degree of force that he reasonably believes necessary to protect himself. The justification relies on: (1) the existence of necessity, (2) the occasion on which force was used, (3) the degree of force used, and (4) the nature of the conduct to which responded. There are four situations in which the use of force is *not* justified:

- (1) Verbal provocation alone does not ever merit the use of force in response.
- (2) The right of self defense in order to resist an illegal arrest or search by a peace officer does not exist, *unless* the officer, prior to any resistance, uses greater force than necessary. Section 38.03 makes resisting arrest a Class A misdemeanor and a third-degree felony if a deadly weapon is used. Persons acting under the direction and in the presence of a peace officer are accorded this same protection.
- (3) If there was consent to the exact force used, then force used in retaliation is not justified. Mutual combat is thus prohibited.

- (4) Provoking the difficulty prohibits one from using force if he had provoked the difficulty as a means of injuring the adversary.

The use of *deadly* force in self defense is treated separately (Section 9.32). Although deadly force can be used to prevent the imminent commission of the crimes of aggravated kidnapping, murder, rape, aggravated rape, robbery, and aggravated robbery, such right is not absolute in that if a reasonable person would have retreated, then the use of deadly force would not be justified. Unless it falls within the defense of property section, one cannot use deadly force to prevent theft at night or burglary.

Under old Texas law, a person acting in self defense did not have to retreat and could stand his ground, but now a person must retreat if a reasonable person in the same situation would have retreated.

Perhaps the safest course of action is for no one to use deadly force unless he believes (1) that his or another's life is in jeopardy, (2) that deadly force is immediately necessary to preserve that life, and (3) that a reasonable person would not have retreated.

The code allows the use of force or deadly force to protect a third person under the very same conditions and with the same restrictions that the person could have used in defending himself (Section 9.33). Additionally, however, is the requirement that the intervention must be reasonably believed to be necessary to protect the third person. Any force, short of deadly force, may be used to prevent a suicide.

Both force and deadly force are justified in defense of property, but under limited circumstances (Sections 9.41 and 9.42).

Force may be used to protect land or movable property if such force is immediately necessary to *prevent* or *terminate* another's interference with the property.

If the property has been *taken* from the owner, then force may be used to regain possession *if*:

- (1) done immediately or in fresh pursuit after the taking, and,
- (2) the person seeking to regain possession reasonably believes that the taking was not under claim of right, *or*
- (3) the property was taken by force, threats or fraud.

Deadly force to protect property may be used if it is immediately necessary:

- (1) to *prevent the imminent commission* of arson,

burglary, robbery, aggravated robbery, theft during the nighttime or criminal mischief during the nighttime, or

- (2) to *prevent escape with property* taken in a burglary, robbery, aggravated robbery or theft at night if the deadly force is exerted against the person who is fleeing immediately after committing the offense.

However, using deadly force to protect property must always be a *last resort in that the code requires that either the property cannot be protected or recovered by any other means or that the use of force other than deadly force would subject oneself or another to a substantial risk of death or serious bodily injury.*

One may use any degree of force against another to protect the property of a third person (Section 9.43) under the same rules governing the protection of his own property if he reasonably believes that the unlawful interference constitutes theft or criminal mischief. One may also act to protect the property of a third person if:

- (1) such third person requested such protection, or
- (2) he has a legal duty to protect such property, or
- (3) such third person is his spouse, parent, child, or resides with or is under his care.

The code permits the use of a device to protect property (Section 9.44) only if it is not expected to cause or create any substantial risk of death or serious bodily injury *and* the use of the device is reasonable under the circumstances. This would condone the use of barbed wire under certain circumstances but prohibits the use of a spring gun.

But it must always be remembered that deadly force would not be justified under any of these circumstances unless the land or property could not be protected or recovered by any other means.

A peace officer is authorized to use force which he believes immediately necessary to make or assist in making an arrest or search or to prevent escape after arrest (Sections 9.51 and 9.52). However, the officer must believe the arrest or search lawful or the warrant is valid and before using force, he must identify himself as a peace officer and apprise the person of his purpose of arrest or search. If the officer believes his identity and purpose are already known or he cannot reasonably communicate these facts to the assailant (such as where a defendant has barricaded himself some distance away), then the officer could proceed without concern over this requirement.

A private person may use force which he reasonably believes immediately necessary to make a lawful arrest or prevent an escape after a lawful arrest if, before using any force, he notifies the person to be arrested of his purpose and the reason for the arrest (unless he believes that such purpose and reason are already known or cannot reasonably be made known to the person to be arrested).

In order for a peace officer to use deadly force to effect an arrest (or to prevent escape after arrest), the officer must reasonably believe that the conduct authorizing the arrest included the use or attempted use of deadly force or that there is a substantial risk of death or serious bodily injury at the hands of the person sought to be arrested if the arrest is delayed.

A private citizen cannot use deadly force in making an arrest (or preventing an escape) unless he is in the presence of and acting at the direction of a peace officer *and* (1) the citizen is making an arrest for a felony or an offense against the public peace and an arrest for which authorized the use or attempted use of deadly force, or (2) there is substantial risk that the person sought to be arrested will cause death or serious bodily injury to another if arrest is delayed. There is no duty on the part of the police officer or the private citizen in making an arrest or preventing escape after arrest to retreat before using deadly force.

The code permits the same use of force to prevent escape from custody as that used to effect the arrest under which the person is in custody (Section 9.52). Only a peace officer or guard of a penal institution may use deadly force to prevent the escape from jail, prison or other institution for the detention of persons convicted of or charged with a crime.

The code justifies the use of force against a child younger than 18 years by the child's parent, step-parent or one acting *in loco parentis* for the purpose of discipline or to safeguard or promote the child's welfare (Sections 9.61, 9.62, and 9.63). Persons *in loco parentis* include grandparents, guardians, those acting by, through or under the direction of a court having jurisdiction over the child, or anyone with the express or implied consent of the parents. Presumably, this latter provision would cover the baby-sitter. The educator may use force against the student, no matter what the age of the student, if the educator is entrusted with the care, supervision, or administration of the person for a special purpose or to maintain discipline in a group. The guardian or someone responsible for the general care and

supervision of a mental incompetent may use force to safeguard and promote the incompetent's welfare or if it is an institution, to maintain discipline in the institution. The use of deadly force in regard to these special relationships is prohibited.

TITLE 3. PUNISHMENTS

Punishments fall into categories of Capital, First, Second and Third-Degree Felonies, or Class A, B, or C Misdemeanors. See the chart on the back cover for the penalty ranges these classifications carry.

Subchapter D. Exceptional Sentences.

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, 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. (This is the "habitual offender" provision.)

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, 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.

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 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.

Subchapter E. Corporations and Associations.

Section 12.51. Authorized Punishment for Corporations and Associations — Corporations are only subject to fines. If the offense is punishable by a fine only, the corporation may not be fined in excess of the stated fine. If the offense may also be punished by prison or if no specific penalty is stated, the corporation may be fined no more than \$20,000 for a felony, no more than \$10,000 for a Class A or B misdemeanor, or \$2,000 for a Class C misdemeanor. In lieu of these fines, a corporation guilty of gaining money or property by a felony or Class A or B misdemeanor may be fined any amount not to exceed double the amount gained.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

There are three preparatory offenses as follows.

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 that tends but fails to effect the commission of the offense intended.
- (b) A person attempts an aggravated offense if an element that aggravates the offense accompanies the attempt.
- (c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

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

Section 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.

A conspiracy is similar to an attempt in that it is one degree lower than the offense contemplated.

Section 15.03. Criminal Solicitation — Criminal solicitation, limited to capital felonies and felonies in the first degree, occurs as follows:

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. However, 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.

CHAPTER 16. CRIMINAL INSTRUMENTS

Section 16.01. Unlawful Use of Criminal Instrument

— The criminal instrument provision is something of a catch-all. Anything specially designed, made or adapted for use in the commission of an offense is a criminal instrument ~~if~~ it is not prohibited by another statute. Possession of a criminal instrument with intent to use it in the commission of an offense is a class A misdemeanor. Sale, manufacture, or installation of a criminal instrument with intent to facilitate its unlawful use is a felony of the third degree.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL 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 includes murder, voluntary manslaughter, involuntary manslaughter, or criminally negligent homicide.

Section 19.02. Murder (first-degree felony) —

- (a) A person commits an offense if he:
 - (1) intentionally or knowingly causes death,
 - (2) intentionally causes serious bodily injury which leads to death, or
 - (3) commits a felony and during the course of the felony causes death.

There is no requirement of malice aforethought.

Section 19.03. Capital Murder —

- (a) A person commits a capital felony if he commits murder as defined under Section 19.02 (a) (1) above and:
 - (1) the person murdered is a peace officer or fireman who is acting in the lawful discharge of an official duty and who the actor knows is a peace officer or fireman;
 - (2) the murder is intentionally done in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated rape, or arson;
 - (3) the murder is for remuneration, or another is employed to commit the murder for remuneration or the promise of remuneration;
 - (4) the murder is committed while escaping or attempting to escape from a penal institution; or
 - (5) while incarcerated in a penal institution, he murders another who is employed in the operation of the penal institution.

The punishment for capital murder is life or death.

Section 19.04. Voluntary Manslaughter (second-degree felony) — This occurs when one commits murder but acts under the immediate influence of a sudden passion arising from an adequate cause.

Section 19.05. Involuntary Manslaughter (third-degree felony) — This is applicable in two situations:

- (1) where one recklessly causes the death of another, or
- (2) where one is intoxicated and due to the intoxication kills another while operating a motor vehicle. (Intoxication can be caused by alcohol, drugs, or any outside substance voluntarily taken into the body.)

Section 19.07. Criminally Negligent Homicide (Class A misdemeanor) — This is where one causes the death of another by criminal negligence, that is when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. There must be a gross deviation from the standard of care an ordinary person would use.

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Section 20.02. False Imprisonment (Class B misdemeanor) — This is intentionally or knowingly restraining another (unless the victim is exposed to a substantial risk of serious bodily injury, in which case it is a third-degree felony). It is a defense if the person restrained is a child under 14 and the actor was a relative with the sole intent of assuming lawful control of the child.

Section 20.03. Kidnapping (third-degree felony) — An offense occurs when one intentionally or knowingly abducts another person, *unless* the abduction was done without the use or threatened use of deadly force, by a relative of the person abducted *and* the sole intent was to assume lawful control of the person abducted.

Section 20.04. Aggravated Kidnapping (first-degree felony, unless the actor voluntarily releases the victim alive and in a safe place, then a second-degree felony) — This occurs where one commits kidnapping and in addition does one of the following acts:

- (1) holds victim for ransom or reward,
- (2) uses him as a shield or hostage,
- (3) injures or sexually abuses the victim,
- (4) terrorizes him or a third person,
- (5) interferes with any governmental function, or
- (6) facilitates the commission of a felony or the flight thereafter.

CHAPTER 21. SEXUAL OFFENSES

Section 21.02. Rape (second-degree felony) — Generally, this is where sexual intercourse is engaged in through the use of threats, force or fraud.

Section 21.03. Aggravated Rape (first-degree felony) — Rape is aggravated where serious bodily injury occurs or death is attempted in the same criminal episode, or where submission is compelled by threat of death, or serious bodily injury or kidnapping, to be immediately inflicted on anyone.

Section 21.04. Sexual Abuse and Section 21.05. Aggravated Sexual Abuse — These two statutes are violated in the same manner as rape and aggravated rape, and carry the same penalties. The only difference is that they apply where "deviate sexual intercourse" occurs. This means any contact between any part of the genitals of one person and the mouth and anus of another person, with intent to gratify the sexual desires of any person.

Section 21.06. Homosexual Conduct (Class C misdemeanor) — Homosexual conduct is deviate sexual intercourse with a member of the same sex.

Section 21.07. Public Lewdness (Class A misdemeanor) — This occurs where one carries on sexual intercourse or sexual contact in a public place with any person, or an animal or fowl, or is reckless about whether another will be offended or alarmed.

Section 21.08. Indecent Exposure (Class C misdemeanor) — This occurs where one exposes his or her anus or genitals with intent to arouse sexual desire of any person and is reckless about whether another is present who will be offended or alarmed.

Section 21.09. Rape of a Child (second-degree felony) — This occurs where a male engages in consensual intercourse with a female not his wife and under 17. If the female is 14 or older and had promiscuously engaged in sexual conduct, there is no offense. Also, the actor must be over 2 years older than the victim to be convicted of this offense.

Section 21.10. Sexual Abuse of a Child (second-degree felony) — This is the same as Section 21.09 with regards to age and previous sexual conduct, but this offense consists of oral contact with the genitals of another.

Section 21.11. Indecency with a Child (third-degree felony) — This is the same as Section 21.09 insofar as the age is concerned, but consists of sexual contact with a child or exposing one's genitals or anus to a child.

Section 21.12. General Provisions — This provides that a male and female who cohabit will be treated as husband and wife insofar as Sections 21.02 through 21.05 are concerned. In other words, cohabitation will be a defense to rape and sexual abuse regardless of an actual legal marital status or whether the couple hold themselves out as husband and wife.

CHAPTER 22. ASSAULTIVE OFFENSES

Section 22.01. Assault. — An assault consists of:

- (1) knowingly, recklessly, or intentionally causing bodily injury to another Class A misdemeanor), unless the assault is caused by the owner or employee of an institution described in Article 4442C V.A.C.S. in which event it is a third degree felony,
- (2) threatening imminent bodily injury (Class C misdemeanor), unless the threatened assault is caused by the owner or employee of an institution described in Article 4442C V.A.C.S. in which event it is a Class B misdemeanor, or
- (3) causing physical contact where the actor knows it will be offensive (Class C misdemeanor).

Section 22.02. Aggravated Assault (third-degree felony) — Aggravated assault is an assault which:

- (1) causes serious bodily injury,
- (2) causes bodily injury to one he knows is a peace officer in the lawful discharge of his duties, or
- (3) involves the use of a deadly weapon in making an assault.

Section 22.03. Deadly Assault on Officer (first-degree felony) — This occurs where one uses a firearm or *prohibited* (Section 46.06) weapon and causes serious bodily injury to one he knows is a peace officer in the lawful discharge of his duties.

Section 22.04. Injury to a Child (second-degree felony) — This occurs where one causes serious bodily injury or deformity or impairment to a child under 15. It should be noted this includes reckless or criminally negligent conduct, in addition to knowing and intentional conduct.

Section 22.05. Reckless Conduct (Class B misdemeanor) — This occurs where one recklessly places another in imminent danger of serious bodily injury. Recklessness and danger are presumed where one points a firearm (loaded or unloaded) at another's direction.

Section 22.07. Terroristic Threat — This occurs where one threatens to commit a crime of violence and:

- (a) intends to cause a reaction by agencies organized to deal with emergencies (Class B misdemeanor),
- (b) intends to place one in fear of imminent serious bodily injury (Class B misdemeanor), or
- (c) intends to prevent use of a building, or assembly, or any public place or aircraft or auto or form of conveyance (Class A misdemeanor).

Section 22.08. Aiding Suicide (Class C misdemeanor) — This is where one aids or attempts to aid another in the commission of suicide. If the suicide or serious injury occurs, it is a third-degree felony.

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Section 25.01. Bigamy (third-degree felony).

Section 25.02. Incest (third-degree felony) — This includes intercourse or deviate intercourse with relatives of the relationship of aunt, uncle, nephew, niece or closer, such as brother-sister, father-daughter. If the relationship is by adoption, or between a step-parent and step-child, the same rules apply.

Section 25.03. Interference with Child Custody (third-degree felony) — This occurs where one takes a child under 18 out of state either in violation of a court order or where he has not been awarded custody and knows a divorce action has been filed.

Section 25.04. Enticing a Child (Class B misdemeanor) — This occurs where one entices a child from those with lawful custody.

Section 25.05. Criminal Non-Support (Class A misdemeanor, second offense is a felony) — One must support children under 18 or a spouse in needy cir-

cumstances. If one cannot afford to contribute support (such as being unemployed and indigent), there is no offense.

***Section 25.06. Sale or Purchase of a Child** (Class A misdemeanor) — Provides criminal penalties for any person to offer or agree to offer a child for sale, or offers to give a thing of value for a child. This section does not apply to an authorized child placing agency, or a lawyer or doctor.

***Section 25.06. Solicitation of a Child** (Class A misdemeanor) — Provides an offense for any person to entice a child younger than 14 to enter any vehicle, building, or structure with the intent to engage in prohibited sexual activity or expose himself. Becomes 3rd degree felony if child is taken out of county.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Section 28.01. Definitions — Under this section, "*habitation*" has been changed to include any structure or vehicle adapted for overnight accommodations.

Section 28.02. Arson (second-degree felony) — This is where one starts a fire or explosion of another's habitation or building. Also, it includes setting fire to one's own building in an effort to collect insurance. If bodily injury occurs, this is a first-degree felony.

Section 28.03. Criminal Mischief — This occurs where one intentionally or knowingly damages or destroys property of another or tampers with another's property where this causes a pecuniary loss or substantial inconvenience. The category of offense depends on the amount of the loss. The values are:

.00 — \$	5.00	Class C misdemeanor
\$ 5.00 — \$	20.00	Class B misdemeanor
\$ 20.00 — \$	200.00	Class A misdemeanor
\$200.00 — \$10,000.00		Third-degree felony
Over \$10,000.00		Second-degree felony

It is also a third-degree felony where one maliciously impairs or interrupts public communications.

***Note:** These sections were both passed bearing same statute number. The first effective March 30, 1977, the second June 15, 1977.

public transportation or public services, or causes loss to cattle, horses, sheep, swine or goats or damages a fence holding these animals or misbrands the same animals regardless of the amount of pecuniary loss.

Section 28.04. Reckless Damage or Destruction — If one recklessly damages property, i.e. is a Class C misdemeanor.

Section 28.06. Amount of Pecuniary Loss — The cost of the repairs governs unless destruction occurs, then it is the fair market value of replacement.

CHAPTER 29. ROBBERY

Section 29.02. Robbery (second-degree felony) — Robbery is a crime against the person and occurs in the course of committing theft, coupled with either causing bodily injury or threatening bodily injury or death to another. The amount taken has no bearing on the offense.

Section 29.03. Aggravated Robbery (first-degree felony) — This is the same as robbery (29.02), but occurs where serious bodily injury is caused or a deadly weapon is used or exhibited.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Section 30.02. Burglary (second-degree felony) — This occurs where one enters a building with intent to commit a felony or theft. Entry means entry of any part of the body or object connected to the body. Also, to enter lawfully and remain concealed is a burglary.

Burglary is a *first-degree felony* if the building is a habitation (this includes a vehicle adapted for overnight use), or the burglar is armed (including explosives) or any injury is inflicted or attempted by the burglar while he is in or fleeing from the building.

Section 30.03. Burglary of Coin Operated Machines (Class A misdemeanor) — This includes entry of a coin-operated machine with intent to obtain goods or services of value.

Section 30.04. Burglary of Vehicles (third-degree felony) — This occurs where one intends to commit a felony or any theft at the time the unauthorized entry of a vehicle is made. Entry means intrusion by any part of the body or any object attached to the body.

Section 30.05. Criminal Trespass — A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

- (a) had notice that the entry was forbidden; or
- (b) received notice to depart but failed to do so.

For purposes of this section:

- (a) "entry" means the intrusion of the entire body; and
- (b) "notice" means:
 - (1) oral or written communication by the owner or someone with apparent authority to act for the owner;
 - (2) fencing or other enclosure obviously designed to exclude intruders; or
 - (3) signs posted to be reasonably likely to come to the attention of intruders.

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 31.02. Consolidation of Theft Offenses — The previous offenses of theft, theft by bailee, theft by false pretext, theft from person, shoplifting, swindling, hot checks, embezzlement, extortion, and receiving stolen property are the single offense of theft.

Section 31.03. Theft — Theft includes receiving and concealing stolen property.

- (1) Evidence that the defendant 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.
- (2) The testimony of an accomplice is corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice.
- (3) Theft also includes the threat to commit in the future a felony offense against another, or another's property, in order to obtain property (2nd degree felony regardless of amount).
- (4) Persons engaged in the buying and selling of second hand merchandise (other than motor vehicles) are presumed to have received property knowing it was stolen if (a) value over \$25 and (b) fails to obtain identification of seller or (c) fails to record

complete description of the property including serial number, if any, or (d) fails to obtain signed warranty of title from seller.

The classification of offense for theft is the same as criminal mischief. See Section 28.03

Section 31.04. Theft of Service — This statute uses the same value system for determining classification of offense as theft.

- (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 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.
- (3) holds property beyond the rental period.
- (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. Intent to avoid payment is likewise presumed if the person failed to return rented property 10 days after demand.

Section 31.05. Theft of Trade Secrets — A person commits a felony of the third degree if he steals, copies or transmits a trade secret, which is defined as "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."

Section 31.06. Presumption for Theft by Check — The person who issues a hot check commits theft and his intent to deprive is presumed if he had no account or if he failed to pay within 10 days of receiving notice that the check was refused by the bank.

Section 31.07. Unauthorized Use of Vehicle (third-degree felony) — No property values are applicable here. It is always a felony to operate another's boat,

airplane, or motor propelled vehicle without consent of owner.

Section 31.08. Value — The fair market value or replacement value is used in determining value. If a document does not have a market value, the greatest amount of economic loss the owner could suffer would be the value.

Section 31.09. Aggregation of Amounts Involved in Theft — This statute provides:

“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.”

Therefore, if one should steal five \$50.00 bicycles over a short period of time, he could be charged with the single offense of felony theft for the total \$250.00 aggregate amount. You would have to allege and prove the five thefts to successfully prosecute the case as a felony.

CHAPTER 32. FRAUD

Subchapter B. Forgery.

Section 32.21. Forgery — Forgery includes making, passing, or uttering a forged instrument. Forgery of a check, will, mortgage, security instrument, deed, credit card, or commercial paper is a third-degree felony. Forgery of United States currency, stamps, or governmental documents or securities is a second-degree felony. Otherwise, forgery is generally a class A misdemeanor.

Section 32.22. Criminal Simulation (Class A misdemeanor) — 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.

Subchapter C. Credit.

Section 32.31. Credit Card Abuse (third-degree felony) — Credit card abuse includes:

- (1) use of the card without the effective consent of the cardholder, or
- (2) use of a fictitious credit card or the pretended number of a fictitious credit card;
- (3) receipt of property or service obtained in violation of this section;
- (4) theft of a credit card, or, with knowledge that it has been stolen, receipt of a credit card with intent to use it;
- (5) buying a credit card from a person known not to be the issuer;
- (6) not being the issuer, selling a credit card;
- (7) inducing the cardholder to use the cardholder's credit to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;
- (8) without the effective consent of the cardholder, signing or writing one's name or the name of another on a credit card;
- (9) possessing two or more incomplete credit cards that have not been issued to him with intent to complete them;
- (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, he fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

Section 32.32. False Statement to Obtain Property or Credit (Class A misdemeanor) — One must knowingly make a false statement to obtain credit or property in order to be guilty of this offense.

Section 32.33. Hindering Secured Creditors. — If mortgaged property is removed from the state, it is a third-degree felony. If a person damages, destroys or transfers the property in an effort to hinder the lien holders' rights, it is a Class A misdemeanor.

For purposes of this section, the actor 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.

Section 32.34. Fraud in Insolvency (Class A misdemeanor) — This offense deals with hindering creditors during a bankruptcy proceeding.

Section 32.35. Receiving Deposit, Premium, or Investment in Failing Financial Institution (Class A misdemeanor) — This offense is committed by a person who accepts a deposit on behalf of a financial institution when he knows the institution is insolvent.

Subchapter D. Other Deceptive Practices.

Section 32.41. Issuance of Bad Check — This section makes it an offense to issue a bad check. It is not necessary under this offense that the person giving the check receive anything in return for the check. The basis for the offense is that one who places a worthless piece of paper in the channels of commerce should be guilty of some type crime. The offense is a Class C misdemeanor and the charges would be filed either in the municipal court or in the justice of the peace court.

Section 32.42. Deceptive Business Practices (Class A misdemeanor) — This section makes offenses of the following deceptive business practices when committed either knowingly or recklessly:

- (1) using, selling, or possessing for use or sale a false weight 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 second-hand;
- (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.

Section 32.43. Commercial Bribery (third-degree felony) — This makes it a crime for a fiduciary (lawyer, trustee, agent or employee, executor, etc.) to solicit or accept any benefit in consideration for harming the beneficiary or violating a duty to the beneficiary.

Section 32.44. Rigging Public Contest (Class A misdemeanor) — The offense consists of offering or giving something to a contestant not to do his best or to an official or to tamper with an athlete or animal or object involved in the contest. The person accepting the benefit is equally guilty.

Section 32.45. Misapplication of Fiduciary Property or Property of Financial Institution — If one knowingly or recklessly misapplies property he holds in this capacity (trustee, bank teller, etc.) he is guilty of a Class A misdemeanor (under \$200), third-degree felony (\$200 to \$10,000), second-degree felony (over \$10,000).

Section 32.46. Securing Execution of Document by Deception (third-degree felony).

Section 32.47. Fraudulent Destruction, Removal, or Concealment of Writing (Class A misdemeanor) — If with intent to defraud, one destroys, removes, conceals, alters or substitutes any writing which 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.

Note: This is a third-degree felony if a will, deed, mortgage or any writing for which the law provides for a public recording is involved.

Section 32.48. Endless Chain Scheme (Class B misdemeanor) — If one participates in an endless chain scheme, which 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,” he violates this section. This is sometimes known as a “Pyramid Club.”

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Section 36.01. Definitions — “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.

Section 36.02. Bribery — One who offers or confers a benefit on any public servant or voter to influence him, and the public servant receiving or soliciting the same commits a 2nd degree felony.

Section 36.03. Coercion — One who coerces a public official commits a Class A misdemeanor unless the coercion is a threat to commit a felony on the official, then it is a third-degree felony.

Section 36.04. Improper Influence (Class A misdemeanor) — This provides that 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.

An "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.

Section 36.05. Tampering with Witness (felony of the third degree) — This offense consists of one bribing or coercing a witness to:

- (1) testify falsely;
- (2) withhold any testimony, information, document, or thing;
- (3) elude legal process summoning him to testify or supply evidence; or
- (4) absent himself from an official proceeding to which he has been legally summoned.

The witness is guilty if he solicits or accepts a benefit.

Section 36.06. Retaliation (felony of the third degree) — This occurs where one harms or threatens harm by an unlawful act in retaliation to another who has acted as a public servant, witness, or informant.

Section 36.07. Compensation for Past Official Behavior (Class A misdemeanor) — This occurs where one pays or offers to pay a public servant *after* the public servant has acted on an official matter. The public servant who solicits or accepts payment is equally guilty.

Section 36.08. Gift to Public Servant by Person Subject to His Jurisdiction (Class A misdemeanor) — This applies to public servants:

- (1) in judicial positions,
- (2) those having custody of prisoners,
- (3) those in administrative positions,
- (4) those in legislative positions and
- (5) those exercising discretion in regards to contracts, purchases, or any other pecuniary governmental transactions.

It also prohibits any public servant from accepting or soliciting any gift from one who might be affected by or subject to his official actions.

Section 36.09. Offering Gift to Public Servant (Class A misdemeanor) — This offense consists of the offering or giving to a public servant any benefit mentioned in Section 36.08.

Section 36.10. Defenses to 36.08 and 36.09. — It is not unlawful to accept a lawful fee, a trivial benefit, a gift from a relative or business associate, or a political contribution.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Section 37.02. Perjury (Class A misdemeanor) — This is a false statement under oath, where the statement is required or authorized by law to be made under oath.

Section 37.03. Aggravated Perjury (felony of the third degree) — This is perjury — as defined above — and made in connection with an official proceeding (such as in court). The statement made must be material.

Section 37.05. Retraction — It is a defense to Section 37.03 that one retract his statement before completion of the official proceeding and before it became manifest that the falsity would be exposed.

Section 37.06. Inconsistent Statements — An information or indictment for perjury or aggravated perjury that alleges that the declarant has made statements under oath, both of which statements cannot be true, need not allege which statement is false and the prosecution is not required to prove which statement is false.

Section 37.07. Irregularities No Defense — Any irregularity in taking the oath or in the notary's jurat is not a defense.

Section 37.08. False Report to Peace Officer (Class B misdemeanor) — 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.

Section 37.09. Tampering with or Fabricating Physical Evidence (Class A misdemeanor) — 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 in-

- vestigation 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.

Section 37.10. Tampering with Governmental Record (Class A misdemeanor unless the intent is to defraud or harm another, in which case the offense is a felony of the third degree) — 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.

Section 37.11. Impersonating Public Servant. (Class A misdemeanor unless the person impersonated is a peace officer, in which event it is a felony of the third degree) — 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.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Section 38.02. Failure to Identify as Witness (Class C misdemeanor) — 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.

Section 38.03. Resisting Arrest or Search (Class A misdemeanor) — A person commits an offense if, by using force against the peace officer or another, 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 his or another's arrest or search.

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

Note: Where a deadly weapon is used, this is a felony of the third degree.

Section 38.04. Evading Arrest (Class B misdemeanor) — A person commits an offense if he knowingly flees from a peace officer who is attempting to arrest him. If arrest is unlawful, it is not an offense.

Section 38.05. Hindering Apprehension or Prosecution (Class A misdemeanor) — 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.

Section 38.06. Compounding (Class A misdemeanor) — 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.

Section 38.07. Escape — One who is arrested, charged, or convicted who escapes from custody is guilty of a Class A misdemeanor (unless it is a felony arrest, charge, or conviction in which it is a felony of the third degree). Should he use or threaten to use a deadly weapon in escaping, it is a felony of the second degree.

Section 38.08. Permitting or Facilitating Escape — Where a guard or official of a penal institution helps an inmate escape, it is a Class A misdemeanor, unless a felony is involved, then it is a felony of the third degree.

Section 38.11. Bail Jumping and Failure to Appear — Where one fails to appear in court, the offense is a Class A misdemeanor, unless the original offense was punishable by fine only in which case the offense is a Class C misdemeanor. If the original offense was a felony, failure to appear in court is a felony of the third degree.

Section 38.13. Hindering Proceedings by Disorderly Conduct (Class A misdemeanor) — A person commits an offense if he uses violent or noisy behavior to disturb an official proceeding.

Section 38.14. Preventing Execution of Civil Process. — This provision makes it an offense of Class C misdemeanor to knowingly or intentionally prevent the

execution of any process in a civil case.

CHAPTER 39. ABUSE OF OFFICE

Section 39.01. Official Misconduct (Class A misdemeanor) — 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.

Section 39.02. Official Oppression (Class A misdemeanor) — A public servant 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.

Section 39.03. Misuse of Official Information (Class A misdemeanor) — A public servant may neither acquire any pecuniary interest nor speculate on the basis of information obtained in his official capacity which has not been made public. Likewise, he may not help another do so.

Section 39.04. — It is a Class A misdemeanor for a public servant to fail to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds.

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Section 42.01. Disorderly Conduct (Class C misdemeanor except Numbers 8 and 9, which are Class B misdemeanors) — A person commits an offense if he intentionally or knowingly:

- (1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;
- (2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;
- (3) creates, by chemical means, a noxious and unreasonable odor in a public place;
- (4) abuses or threatens a person in a public place in an obviously offensive manner;
- (5) makes unreasonable noise in a public place or in or near a private residence that he has no right to occupy;
- (6) fights with another in a public place;
- (7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;
- (8) discharges a firearm in a public place other than a public road;
- (9) displays a firearm or other deadly weapon in a place in a manner calculated to alarm; or
- (10) discharges a firearm on or across a public road; or
- (11) 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.

Section 42.02. Riot (Class B misdemeanor) — 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.

An exception to the general penalty classification is

that 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 (Class B misdemeanor) —

(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; 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.

Section 42.04. Defense When Conduct Consists of Speech or Other Expression — (a) If the conduct consists of speech or other communication to express in a nonviolent manner a position of 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.

If he is not so ordered, or the order given was manifestly unreasonable in scope or was promptly obeyed, it is a defense to prosecution under Section 42.01 (5) or Section 42.03.

Section 42.05. Disrupting Meeting or Procession (Class B misdemeanor) — A person commits an offense by preventing or disrupting a lawful meeting or gathering, either by physical action or verbal utterance.

Section 42.06. False Alarm or Report (Class A misdemeanor) — An offense is committed when one communicates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false, 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.

Section 42.07. Harassment (Class B misdemeanor) — This offense involves communication by telephone or in writing in vulgar, profane, obscene, or indecent language or in a coarse and offensive manner, which intentionally, knowingly, or recklessly annoys or alarms the recipient. Threatening by telephone or in writing, to take unlawful action against any person and by such action intentionally, knowingly, or recklessly annoying or alarming the recipient: placing one or more telephone calls anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication which intentionally, knowingly, or recklessly alarms the recipient is also an offense.

Section 42.08. Public Intoxication (Class C misdemeanor) — This offense is appearing in a public place under the influence of alcohol *or any other substance*, to the degree that one may endanger himself or another.

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.

It is a defense that the alcohol or other substance was administered by a physician.

Section 42.09. Desecration of Venerated Object (Class A misdemeanor) — This is knowingly or intentionally desecrating a public monument, a place of worship or burial, or a state or national flag.

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.

Section 42.10. Abuse of Corpse (Class A misdemeanor) — This includes disinterment, sale, traffic in, dissection, or concealment of a human corpse.

Section 42.11. Cruelty to Animals (Class A misdemeanor) —

- (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 or injures, or administers poisons to an animal other than certain cattle belonging to another without legal authority or the owner's effective consent, or
 - (6) causes one animal to fight with another.

Animal means a domesticated living creature and wild living creature previously captured. Bona fide experimentation for scientific research is a defense to this crime.

CHAPTER 43. PUBLIC INDECENCY

Subchapter A. Prostitution

Section 43.02. Prostitution (Class C misdemeanor) —

- (a) A person commits an offense if he knowingly:
 - (1) offers to engage or engages in sexual conduct for a fee; or
 - (2) solicits another in a public place to engage with him in sexual conduct for hire.
- (b) An offense is completed whether one is receiving or paying the fee, and whether or not one is soliciting a person to hire him, or offering to hire the other.
- (c) Class B unless previously convicted in which event it is a Class A misdemeanor.

To prove up the first conviction, the preferred practice would be for the officer to have witnessed the prostitute's plea of guilty before the corporation or justice court so it can be proved she is the same person.

Section 43.03. Promotion of Prostitution (Class A misdemeanor) — A person commits an offense if, acting

other than as a prostitute, he knowingly receives money or other property pursuant to an agreement to participate in the proceeds of prostitution, or solicits another to engage in sexual conduct with another person for compensation.

Section 43.04. Aggravated Promotion of Prostitution (Felony of the third degree) — This offense is knowingly owning, investing, financing in, controlling, supervising, or managing a prostitution enterprise that consists of two or more prostitutes.

Section 43.05. Compelling Prostitution (Felony of the second degree) — 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.

Section 43.06. Accomplice Witness: Testimony and Immunity — A party to an offense under this subchapter may be required to furnish evidence or testify about the offense, but he may not be prosecuted for any offense about which he is required to testify.

A conviction under this subchapter (Prostitution) may be had by the uncorroborated testimony of a party to the offense.

Subchapter B. Obscenity.

Section 43.21. Definitions — Material is "obscene" if it has a dominant theme that:

- (A) appeals to the prurient interest of the average person applying contemporary community standards;
- (B) depicts or describes sexual conduct in a patently offensive way; and
- (C) lacks serious literary, artistic, political, or scientific value.

Section 43.22. Obscene Display or Distribution (Class C misdemeanor) — A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing or other obscene material and is reckless about whether a person present will be offended or alarmed.

Section 43.23. Commercial Obscenity (Class B misdemeanor) — A person commits an offense if, knowing the content of the material, he:

- (1) sells, commercially exhibits, or possesses for sale any obscene material;

- (2) 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) hires or uses a person under the age of 17 years to achieve any of the above purposes. (This violation is a Class A misdemeanor.)

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.

Section 43.24. Sale, Distribution, or Display of Harmful Material to Minor (Class A misdemeanor) —

- (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.

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; or
- (3) he hires or uses a minor in doing or accomplishing any of the above acts. (Violation of this subsection is a third-degree felony.)

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.

Section 43.25. Commercial Obscenity Involving Person under 17 Years of Age. — A third degree felony is committed if knowing its content one sells or possesses for sale a photograph or motion picture showing a person younger than 17 engaging in sexual conduct.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY AND MORALS

CHAPTER 46. WEAPONS

Section 46.01. Chapter Definitions —

- (1) "Handgun" means any device designed, made, or adapted to be fired with one hand.
- (2) "Illegal Knife" means a
 - (a) knife with a blade over five and one-half inches,
 - (b) a knife which is designated to be thrown,
 - (c) dagger, including but not limited to a dirk, stiletto and poniard,
 - (d) bowie knife,
 - (e) sword, or
 - (f) spear.
- (3) "Club" means an instrument made or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument.
- (4) "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.

Section 46.02. Unlawful Carrying Weapons (Class A misdemeanor) —

- (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) An offense under this section is a felony of the third degree if it occurs on any premises licensed for the sale or service of alcoholic beverages.

Section 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, unless he is an agent of the owner acting as a security guard in which event he must comply with subsection (5).
- (3) traveling;
- (4) engaging in lawful hunting, fishing or other sporting activity where the weapon is one commonly used; or

- (5) who is a licensed security guard, on duty (or en route), in uniform and with the weapon in plain view.

Section 46.04. Places Weapons Prohibited (Class A misdemeanor)—

- (a) A person commits an offence 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 the 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.

Section 46.05. Unlawful Possession of Firearm by Felon (felony of the third degree) — When one has been convicted of a felony involving an act of violence or *threatened* violence, it is unlawful to possess a firearm away from the premises where he lives.

Section 46.06. Prohibited Weapons (felony of the second degree if weapons (1) through (4) are involved; class A misdemeanor if a switchblade knife or knuckles are involved)

- (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 that the conduct was incidental to official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution, or
- (1) the possession was pursuant to registration pursuant to the National Firearms Act, or
 - (2) the conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

Section 46.07. Unlawful Transfer of Firearm (Class A misdemeanor) — This occurs where one:

- (1) knowing the weapon is to be used in the commission of an unlawful act, sells, rents, loans, or gives a handgun to any person;
- (2) knowingly sells, rents, or gives or offers to sell, rent, or give to any child younger than 18 years; or
- (3) knowingly or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated.

It is a defense that the transfer or sale was to a minor who has written or oral permission from his parent.

CHAPTER 47. GAMBLING

Section 47.02. Gambling (Class C misdemeanor) — This occurs where one:

- (1) makes a bet on a game or contest or on the performance of a participant;
- (2) makes a bet on the result of any political nomination, appointment, or election; or
- (3) plays and bets for money or other thing of value at any game played with cards, dice, or balls.

It is a defense to prosecution under this section and Section 47.04 if:

- (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.

Section 47.03. Gambling Promotion (felony of the third degree) — This offense is committed when a person intentionally or knowingly:

- (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 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.

Section 47.04. Keeping a Gambling Place (felony of the third degree) — Where one uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property owned by him or under his control, or rents property with an expectation that it be so used. Special provision of this section apply to ocean-going vessels. If complied with there exists an affirmative defense.

The same defenses that are applicable to Section 47.02 apply here.

Section 47.05. Communicating Gambling Information (felony of the third degree) — Where one with the intent to further gambling, 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 this information.

Section 47.06. Possession of Gambling Device or Equipment (felony of the third degree) — Where one 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 to be an essential part of a gambling device. Special provisions also apply here for ocean-going vessels, and devices manufactured prior to 1940. The former is an affirmative defenses, the later a defense, if complied with.

Section 47.07. Possession of Gambling Paraphernalia (Class A misdemeanor) — Where one, with the intent to further gambling, knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia. Again special provisions may be applicable for ocean-going vessels. If complied with may constitute affirmative defense. No warrant is required to inspect the vessel by District or County Attorney.

Section 47.08. Evidence — Proof that the defendant communicated gambling information or possessed a gambling device, equipment or paraphernalia is prima facie evidence that he did so knowingly and with the intent to further gambling.

Section 47.09. Testimonial Immunity — A party to

an offense under this chapter may be required to furnish evidence or testify about the offense but may not be prosecuted for any offense about which he is required to testify, and a conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Section 48.01. Smoking Tobacco (Class C misdemeanor) — This section prohibits smoking in a public place under certain circumstances and where proper notification is given.

Section 71.02. Organized Crime — A person commits an offense if with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one of the following acts: Murder, Capital Murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault or forgery, any felony gambling offense, promotion of prostitution, aggravated promotion of prostitution or compelling prostitution, unlawful manufacture, transportation, repair or sale of firearms, or prohibited weapons; or unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception.

An offense is one category higher than the most serious offense alleged. Conspiring to commit is the same degree as the most serious offense alleged.

Section 71.04 Provides for testimonial immunity.

MAJOR DRIVING OFFENSES

This publication does not attempt to deal with minor traffic offenses where original jurisdiction is in the Municipal or Justice of the Peace Courts. It is intended herein to indicate the major driving offenses, which would be County Court misdemeanors or District Court felonies.

These statutes include Driving While Intoxicated (P.C. Art. 802, 802b); Driving Under the Influence of Drugs (V.A.C.S. Art. 6701d, Sec. 50) or Driving While License Suspended (V.A.C.S. Art. 6687b, Sec. 34), Failure to Stop and Render Aid, and Failure to Stop and Give Information (V.A.C.S. Art. 6701d, Sec. 38, 39, and 40).

Fleeing from a Police Officer (V.A.C.S. Section 186) has been reduced by court decision to an offense with a maximum fine of \$200. Since Evading Arrest applies to most flight situations, it can be used in most cases as

opposed to Fleeing from a Peace Officer. Evading Arrest provides:

"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."

Several other provisions in the Penal Code have frequent applicability to automobile accidents. Some are:

WHERE NO BODILY INJURY IS INVOLVED:

"Section 22.05 Reckless Conduct: A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury." (Class B misdemeanor) (There is also an offense of Reckless Driving.)

WHERE BODILY INJURY SHORT OF DEATH IS INVOLVED:

"Section 22.01 Assault: A person commits an offense if he intentionally, knowingly, or recklessly causes bodily injury to another." (Class A misdemeanor)

"Section 22.02 Aggravated Assault: A person commits an offense if he commits assault as defined in Section 22.01 of this code and he causes serious bodily injury to another." (Felony of the third degree)

WHERE DEATH IS INVOLVED:

"Section 19.06 Criminally Negligent Homicide: A person commits an offense if he causes the death of an individual by criminal negligence." (Class A misdemeanor) It should be stressed that the test of negligence requires "a gross deviation from the standard of care an ordinary person would exercise under all the circumstances . . ." as opposed to the requirement of ordinary negligence found under the old code.

"Section 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." (Felony of the third degree) This is an expansion of the Murder by Auto provisions in that it will cover intoxication by any controlled substances.

TEXAS CONTROLLED SUBSTANCES ACT

The Texas Controlled Substances Act contains the majority of the drug laws in the State of Texas. It establishes administrative and regulatory provisions, classifies all drugs as controlled substances, and completely establishes the punishments for violations. A substance is either a controlled substance within the meaning of the new law and subject to its penalties and regulations, or it is not. If not, it may be a Dangerous Drug.

DEFINITIONS:

Among the most important definitions are:

Delivery means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. This includes offers to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Possession is the actual care, custody, control or management of a controlled substance by one or more persons.

Person among other things means any individual, corporation or government or governmental sub-division or agency.

Manufacture includes production, preparation, propagation, compounding, conversion, or the processing of a controlled substance, other than marijuana, either directly or indirectly.

CONTROLLED SUBSTANCES SCHEDULES:

For the purpose of administrative regulation of practitioners and registrants, i.e., doctors, pharmacists, veterinarians, etc., schedules are established. Tests are set forth for determining what controlled substances will be included in which schedule. Except for fraud offenses, the penal provisions of this Act are not connected with these schedules in any way. Subject to certain limitations, the Commissioner of Health of the State Department of Health, with the approval of the

State Board of Health, has the power to add substances to, or delete or re-schedule any of the controlled substances enumerated in the five schedules. Controlled substances are placed in one of the five schedules depending upon their relative potential for abuse, whether or not they have accepted medical use and whether or not they may lead to physical or psychological dependence.

REGULATION OF CONTROLLED SUBSTANCES:

The Director of the Department of Public Safety is charged with the responsibility of registering those persons who manufacture, distribute and dispense controlled substances in a lawful manner. In addition, the Director has the power to institute proceedings through the District Attorney to revoke a registration. Grounds for revocation and suspension include furnishing false or fraudulent material information in one's application; conviction of a felony offense under either state or federal law; revocation of a practitioner's license for willfully failing to maintain records required to be kept or willfully or unreasonably refusing to allow inspections authorized by this Act.

The purpose of the Texas Controlled Substances Act is to promote the public health and welfare by the control of illegal drug traffic. Therefore, the operation of any registrant in violation of the regulations of this Act is a public nuisance, and the Director may apply to any court of competent jurisdiction for and may obtain an injunction suspending the registration of the offender.

CRIMINAL OFFENSES AND PENALTIES:

For the purpose of establishing criminal penalties for acts committed in illegal commerce, there are established four Penalty Groups of controlled substances. Some of the most common substances contained in each penalty group as well as the punishments are listed in this pamphlet on page 54.

Punishment categories in the Controlled Substances Act are in conformance with the Penal Code, rendering applicable the exceptional sentence provisions. Punishment is dependent upon the penalty group in which the particular substance lies.

Both the possession of and delivery of marijuana is punishable under a separate section and is not listed in one of the four penalty groups. Possession of more than four ounces of marijuana is a third-degree felony. Possession of more than 2 ounces, but not more than 4 ounces, is a Class A misdemeanor, and possession of

2 ounces or less is a Class B misdemeanor. The possession of marijuana may not be considered a crime involving moral turpitude.

Possession of controlled substance paraphernalia is a Class A misdemeanor. Controlled substance paraphernalia is defined as a hypodermic syringe, syringe, needle, or other instrument that has on it any quantity (including a trace) of a controlled substance listed in Penalty Group I or II with the intent to use it for administration of the controlled substance by subcutaneous injection in a human being.

Commercial offenses committed under this Act are generally felonies of the second degree. A commercial offense is committed if a practitioner knowingly or intentionally distributes or dispenses a controlled substance without a prescription; or a registrant knowingly or intentionally manufactures a controlled substance not authorized by his registration to another registrant or another person; or refuses or fails to keep or furnish any records required by this Act; or refuses an entry into premises for an inspection authorized by this Act.

Certain offenses such as obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge are included in the fraud section of this Act. If the controlled substance is classified in Schedules I or II, it is a second-degree felony; if the controlled substance is classified in Schedule III, it is a third-degree felony; and if the substance is classified in Schedule IV it is a Class B misdemeanor.

A conditional discharge for first offenders is provided for under this Act. If any person has not previously been convicted of an offense under this Act, or, prior to the effective date of this Act under any statute relating to a substance that is defined by this Act as a controlled substance, the court may place the defendant on probation on such reasonable conditions as it may require for a period not to exceed two years. If during this probationary period the defendant violates a condition of his probation the court may find him guilty and punish him accordingly. If during the period of his probation the defendant does not violate any of the conditions imposed upon him then the court shall discharge him and dismiss the proceedings against him. A discharge or dismissal shall not be considered as a conviction for the purpose of the enhancement of punishment for repeat or habitual offenders. Any other procedure provided by law relating to probation may be followed by the court instead of this one.

For persons previously convicted of an offense involving marijuana, an elaborate re-sentencing provision is contained in this Act. However, on October 10, 1973, this was declared unconstitutional by the Texas Court of Criminal Appeals.

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS:

There are many provisions that aid the Director of the Department of Public Safety in carrying out his duties under this Act. It gives the Director, or a DPS employee designated by him, the authority to enter premises to inspect records and documents required to be kept or stored. This includes any place where a person registered may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance. Such officer or employee entering such premises has the right to inspect at reasonable times upon stating his purpose and presenting to the owner or person in charge his credentials and written notice of his authority to inspect. The inspecting officers have the right to copy records and other documents required to be kept or made under this Act. The Director may arrange for the exchange of information among law enforcement agencies, establish a centralized unit to accept, catalog, file, and collect statistics from all contributing law enforcement agencies and make that information available to federal, state and local law enforcement agencies. This includes records on certain drug dependent persons and other controlled substance law offenders in the State of Texas.

Certain property may be forfeited under this Act. This property includes controlled substances manufactured, distributed, dispensed, delivered, obtained, or possessed in violation of the Act; all raw materials and equipment of any kind that are used to manufacture or process or deliver controlled substances in violation of this Act; all property that is used or intended for use as a container for either of the above; any books or records kept in relation to a commission or intended commission of an offense under this Act; and any conveyance used or intended for use to transport for delivery or in any manner facilitate the transportation for delivery of any controlled substances, packaging materials, etc. However, no conveyance can be forfeited if the delivery involved is only an offer to sell.

No property can be forfeited if one of the above

criminal acts was committed without the owner's knowledge or without his consent. Also, a forfeiture encumbered by a bona fide security interest is subject to the interest of the secured party so long as he did not participate or have knowledge of the criminal act.

Property subject to forfeiture may be seized by any peace officer under authority of a search warrant issued pursuant to this Act. Seizure may be made without a warrant if:

OFFENSES AND PENALTIES UNDER THE TEXAS CONTROLLED SUBSTANCES ACT OF 1973

An Offense with Respect to:	Manufacture, delivery, sale or possession with intent to deliver, sell, etc.	Possession
PENALTY GROUP I: Includes heroin, opium, codeine, LSD, morphine, methadone, pethidine (demerol), methampheta- mine (speed).	first degree felony	second degree felony
PENALTY GROUP II: Includes mescaline, psilocybin, psilocyn, hashish and other hallucinogens including "STP" and "MDA".	third degree felony	third degree felony
PENALTY GROUP III: Includes amphetamines such as Ritalin, preludein, dexedrine, dexamyl, benzedrine; barbiturates such as nembutal (yellow jackets), seconal (red birds), and tuinal (Christmas trees); methaqualone (a hypnotic drug -- trade name "Qualude"); lysergic acid and lysergic acid amide (precursor's to LSD, contained in Hawaiian Baby Wood Rose seed); phencyclidine (a hallucinogen developed as an animal tranquilizer, known as "peace pill"); paregoric; raw peyote (but mescaline extracted in Group II); chloral hydrate ("Mickey Finn" knockout drops); phenobarbital.	third degree felony	Class A misdemeanor
PENALTY GROUP IV: Common codeine cough syrups, such as "Robitussin A/C" and terpin hydrate with codeine, not more than 1 grain of codeine per ounce.	Class A misdemeanor	Class B misdemeanor
MARIJUANA:	Third degree felony (Exception if 1/4 oz. or less is delivered with- out remuneration Class B misdemeanor).	Over 4 oz. -- third degree felony; 2- 4 oz. Class A misd. not more than 2 oz. Class B misdemeanor

- (1) the owner, operator, or agent in charge of the property consents;
- (2) the seizure is incident to a search to which the owner, operator or agent in charge of the property consents;
- (3) the property subjected to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this Act; or
- (4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

THE DANGEROUS DRUG ACT

Dangerous drugs include the following substances, only if they are not controlled substances:

- (A) Tranquilizers;
- (B) Drugs bearing a legend that they are regulated by Federal Law; and
- (C) Procaine, Phendimetrazine, Pentazocine, and related substances.

The act has provisions similar to those of the Controlled Substances Act which regulate the distribution of the substances. However, the punishment provisions in the Dangerous Drugs Act are independent. Generally, possession is a misdemeanor and distribution is a felony.

THE TEXAS FAMILY CODE GOVERNING JUVENILE LAWS

The Texas Family Code, which governs juvenile delinquency matters, became effective September 1, 1973. The upper age for children to be judged delinquent is 17 and the age at which children remain under the jurisdiction of the court (once declared delinquent), is 18. A juvenile offender between the ages of 15 and 17 may be transferred for trial as an adult. A child may not be charged at age 16 and held until his 17th birthday in order to be tried as an adult. Also "child" means a person who has reached his 10th birthday, and jurisdiction is generally limited to those who are at least 10 years old.

Juveniles may now be adjudicated "delinquent" or "in need of supervision." A child may be judged delinquent if

- (1) he committed a felony or a misdemeanor punishable by a jail sentence or
- (2) violated an order of the juvenile court after having been found to have violated a penal law (for

example, violation of a probation order).

In either of these cases the child may be committed to the Texas Youth Council. Those "in need of supervision" include truants, runaways and children who have committed misdemeanors on three or more occasions that are punishable by fine only. The child adjudged in need of supervision cannot be committed to the Texas Youth Council for that reason alone.

Conduct indicating a need for supervision is:

- (1) conduct, other than a traffic offense, that on three or more occasions violates either of the following:
 - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
 - (B) the penal ordinances of any political subdivision of this state;
- (2) conduct which violates the compulsory school attendance laws;
- (3) the voluntary absence of a child from his home without the consent of his parents or guardian for a substantial length of time or without intent to return; or
- (4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or
- (5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives.

Venue for these proceedings is in the county where the child lives or where the conduct is alleged to have occurred.

DETENTION FACILITIES

It is unlawful to keep a child in a facility that has not been certified by the Juvenile Board. Police department facilities will not require certification if the child is temporarily detained there. Only children in long term detention pending a trial after charges have been filed are to be held in an approved facility.

Children and adults are not to be detained in the same section or compartment of a jail nor should there be contact between children and adult violators. An

arrested juvenile must have a detention hearing within 48 hours.

LAW ENFORCEMENT FILES AND RECORDS

Except for files and records relating to a charge for which a child is transferred after a transfer hearing to a criminal court for prosecution, law enforcement files and records concerning a child are not open to public inspection nor may their contents be disclosed to the public, but inspection of such files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law enforcement officers when necessary for the discharge of their official duties.
- (4) Provisions of CHR I are governed by 51.14 of the Family Code.

In addition, the law requires that law enforcement files and records concerning a child to be kept separate from files and records of arrests of adults and to be maintained on a local basis only and not sent to a central state or federal depository.

FINGERPRINTS AND PHOTOGRAPHS

1. Fingerprints of a child may be taken by law enforcement officials in only two instances:
 - a. if a child 15 years or older is referred to the juvenile court for a felony; or
 - b. for comparison with latent fingerprints found during the investigation of an offense.
2. Photographs of a child in custody may be taken only if:
 - a. the juvenile court consents; or
 - b. if the child is transferred to a criminal court after a transfer hearing by the juvenile court.
3. Fingerprint and photograph files or records must be:
 - a. kept separate from files and records on adults;
 - b. kept on a local basis only and not sent to a central state or federal depository;
 - c. available for inspection only as provided by sections 51.14 (a) and (d). (See discussion on Files and Records, above.)
4. Fingerprints and photographs shall be destroyed if:
 - a. a petition is not filed against the child;

- b. the proceedings are dismissed after a petition is filed;
 - c. the child is found not to have engaged in the alleged conduct, or
 - d. the person reaches 18 and there is no record that he committed a criminal offense after reaching 17 years of age.
5. Fingerprints taken only for comparison with latent fingerprints found during the investigation of an offense are subject to special rules:
- a. If the comparison is negative, the child's fingerprints must be destroyed immediately.
 - b. If the comparison is positive, and the child is not referred to juvenile court, the child's fingerprints must be destroyed immediately.
 - c. If the comparison is positive, and the child is referred to juvenile court, all copies of the child's fingerprints must be delivered to the juvenile court.

SEALING OF FILES AND RECORDS

Section 51.16 provides that if a child remains free of further delinquent and criminal conduct for two years following discharge from the juvenile system, he may petition the court for sealing of the files and records pertaining to his case. Where the request for the files to be sealed is made to the court, and the court after the hearing so orders, the following steps must be taken:

- (1) All files and records ordered sealed must be sent to the juvenile court, including the files and records of:
 - (a) law enforcement agencies;
 - (b) prosecuting attorneys;
 - (c) the clerk of the court;
 - (d) the juvenile court itself; and
 - (e) public or private agencies or institutions.
- (2) All index references to the sealed files and records must be deleted;
- (3) If any inquiry is made of any agency or official concerning a person whose files and records were sealed, they shall reply that no record exists with respect to that person;
- (4) the adjudication shall be vacated and the proceeding dismissed and treated for all purposes as if it had never occurred;
- (5) the sealed files and records may be inspected only after the person who is the subject of the files or records petitions the court and the court orders the files and records opened to inspection.

PUBLIC ACCESS TO COURT HEARINGS

This is left entirely to the discretion of the judge. He may exclude the general public entirely or admit such persons as he deems proper.

APPEALS

An appeal from an order of a juvenile court is generally conducted as the appeal of any civil case.

An appeal does not suspend the order of the juvenile court, nor does it release the child from the custody of that court or of the person, institution, or agency to whose care the child is committed, unless the juvenile court so orders. However, the appellate court may provide for a personal bond.

ADMISSIBILITY OF STATEMENTS BY THE JUVENILE

Admissibility of confessions given by juveniles is limited by statute to three specific situations:

- (1) where the confession is a part of a *res gestae* statement;
- (2) if the confession is oral, after proper warnings and includes a statement of facts that is found to be true and tends to establish guilt; and
- (3) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:
 - (a) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;
 - (b) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;
 - (c) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;
 - (d) he has the right to terminate the interview at any time;
 - (e) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may waive its jurisdiction and he may be tried as an adult; and

- (f) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

EVENTS PRIOR TO AND INCLUDING THE REFERRAL TO THE JUVENILE COURT

TAKING INTO CUSTODY

A child may be taken into custody:

1. pursuant to an order of the juvenile court under the provisions of the Code;
2. pursuant to the laws of arrest;
3. by a law enforcement officer if there are reasonable grounds to believe that the child has engaged in delinquent conduct or conduct indicating a need for supervision;
4. by a probation officer if there are reasonable grounds to believe that the child has violated a condition of probation imposed by the juvenile court.

WARNING DISPOSITION

1. The Code authorizes law enforcement agencies to issue a *warning* without taking the child into custody. This may be done where:
 - a. the contact with the child is by a law enforcement officer;
 - b. guidelines for warning disposition have been

- issued by the law enforcement agency in which the officer works;
 - c. the guidelines have been approved by the juvenile court of the county in which the disposition is made;
 - d. the disposition is authorized by the guidelines;
 - e. the warning notice identifies the child and describes his alleged conduct.
2. A copy of the warning notice issued under this procedure must be:
- a. given to the child;
 - b. sent to the child's parent, guardian, or custodian as soon as practicable;
 - c. filed with the law enforcement agency; and
 - d. filed with the office or official designated for that purpose by the juvenile court.

PROCEDURE AFTER A CHILD IS TAKEN INTO CUSTODY

1. A person taking a child into custody, "without unnecessary delay and without first taking the child elsewhere," must do one of the following:
- a. release the child to his parent, guardian, custodian, or other responsible adult upon that person's promise to bring the child before the juvenile court when requested by the court;
 - b. bring the child before the office or official designated by the juvenile court for that purpose.
 - c. bring the child to a detention facility designated by the juvenile court;
 - d. bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or
 - e. dispose of the case without referral to the court according to the provisions of Section 52.03 of the Code (See section on Disposition Without Referral to Court).
2. A person taking a child into custody also shall "promptly give notice of his action and a statement of the reason for taking the child into custody," to:
- a. the child's parent, guardian or custodian, and
 - b. the office or official designated for this purpose by the juvenile court.

DISPOSITION WITHOUT REFERRAL TO COURT

Section 52.03 authorizes a law enforcement officer to dispose of minor juvenile cases without referring them to the juvenile court if the local law enforcement agency and the juvenile court have given him the authority to do so. This disposition differs from the "warning disposition" outlined in a previous section in that here the child has actually been taken into custody.

1. Dispositions under this authority may be made by law enforcement officers if:
 - a. guidelines for such dispositions have been issued by the law enforcement agency in which the officer works;
 - b. the guidelines have been approved by the juvenile court of the county in which the disposition is made;
 - c. the disposition is authorized by the guidelines; and
 - d. the officer makes a written report of his disposition to the law enforcement agency.
 - (1) identifying the child and
 - (2) specifying the grounds for believing that the taking into custody was authorized.
2. Dispositions of this type may involve:
 - a. referral of the child to an agency other than the juvenile court, or
 - b. a brief conference with the child and his parent, guardian or custodian.
3. Dispositions of this type may not involve:
 - a. keeping the child in law enforcement custody; or
 - b. requiring periodic reporting of the child to a law enforcement officer, law enforcement agency, or other agency.

REFERRAL TO JUVENILE COURT

1. Anytime a child or a child's case is referred to the juvenile court, the following must accompany the referral or be provided as quickly as possible after referral:
 - a. all information in the possession of the person or agency making the referral pertaining to the identity of the child and his address, the name and address of the child's parent, guardian, or custodian, the names and addresses of any witnesses, and the child's present whereabouts;

- b. a complete statement of the circumstances of the alleged delinquent conduct or conduct indicating a need for supervision;
- c. when applicable, a complete statement of the circumstances of taking the child into custody; and
- d. when referral is by an officer of a law enforcement agency, a complete statement of all prior contacts with the child by officers of that agency.

RELEASE FROM DETENTION

1. If the child is brought before the court or delivered to a detention facility designated by the court, a further investigation and determination must be made. The law provides the intake or other authorized officer of the court shall immediately make an investigation and either:
 - a. release the child,
 - b. release the child conditioned upon requirements "reasonably necessary to insure the child's appearance at later proceedings," or
 - c. temporarily detain the child.
2. A determination to detain the child at this stage of the proceedings can be made only if the officer believes:
 - a. the child is likely to abscond or be removed from the jurisdiction of the court;
 - b. suitable supervision, care, or protection for the child is not being provided by a parent, guardian, custodian, or other person; or
 - c. the child has no parent, guardian, custodian, or other person able to return him to the court when required.
3. If the intake or other authorized officer decides to detain the child, the law requires that:
 - a. a request for a detention hearing be made and promptly presented to the court, and
 - b. a detention hearing shall be held not later than the next working day after the child was taken into custody.

DISPOSITION BY THE COURT

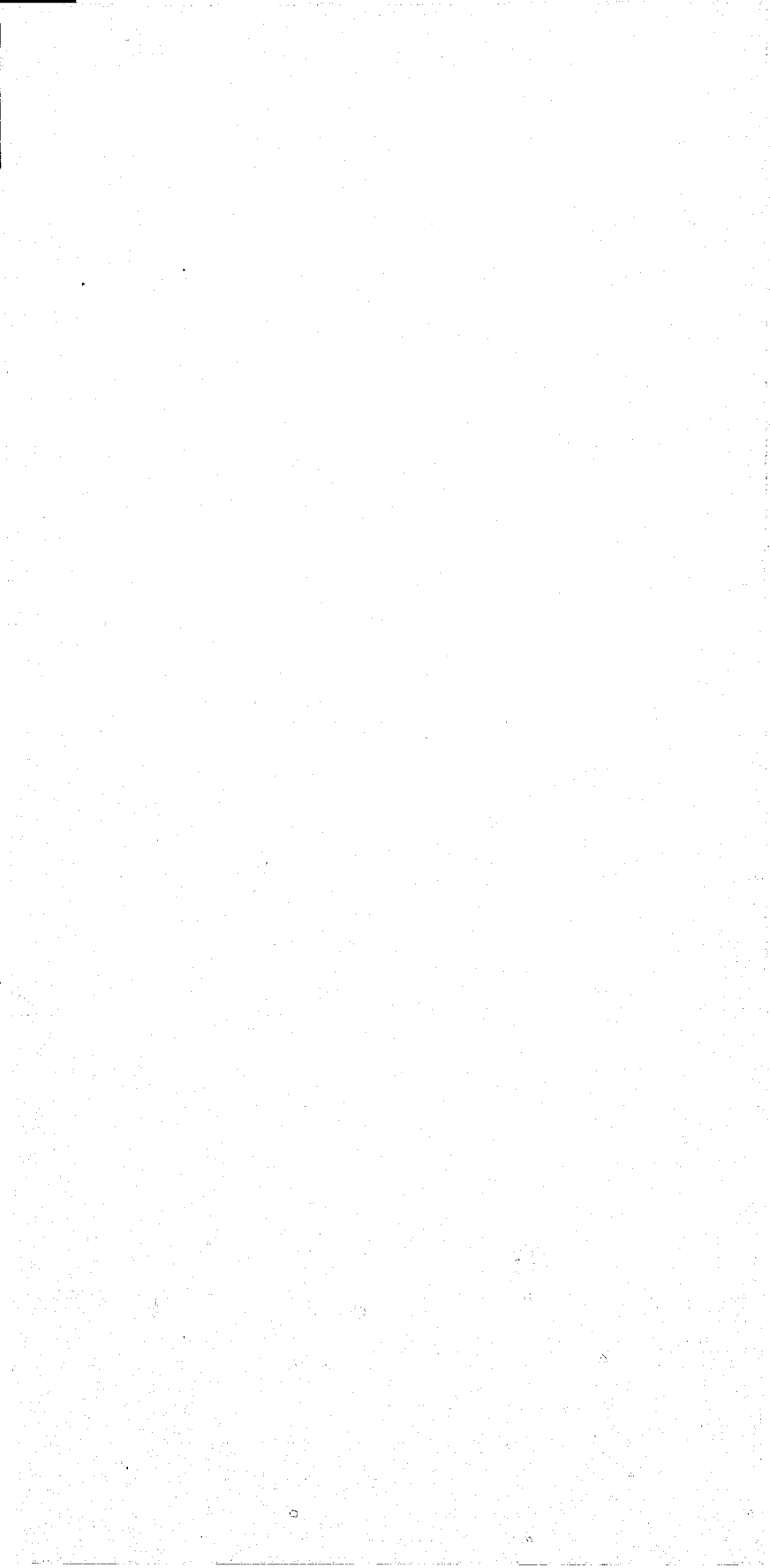
If the child was adjudicated to have engaged in delinquent conduct, the court may:

1. place the child on probation on such reasonable and lawful terms as the court may determine for a period not to exceed one year, subject to exten-

sions not to exceed one year.

2. commit the child to the Texas Youth Council.

If the child was adjudicated to have engaged in conduct indicating a need for supervision, the court may place the child on probation, but may not commit the child to the Texas Youth Council.



GENERAL PENALTIES

Offense

Punishment

Felonies

Capital Felony Life or death

First-degree felony Life or 5 to 99 years

Second-degree felony . . . 2 to 20 years and optional fine
not to exceed \$10,000

Third-degree felony 2 to 10 years and optional fine
not to exceed \$5,000

Misdemeanors

Class A misdemeanor . . . Fine not to exceed \$2,000 and/
or one year or less

Class B misdemeanor . . . Fine not to exceed \$1,000 and/
or 180 days or less

Class C misdemeanor . . . Fine not to exceed \$200

This chart applies only to first offenders. For exceptional sentences and corporations, see the body of the manual, page 17.

END