

PENAL CODE

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States; or

(B) under restraint by an agent or employee of a facility that is operated by or under contract with the United States and that confines persons arrested for, charged with, or convicted of criminal offenses.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

(3) "Economic benefit" means anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.

(4) "Finance" means to provide funds or capital or to furnish with necessary funds.

(5) "Fugitive from justice" means a person for whom a valid arrest warrant has been issued.

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

(7) "Invest funds" means to commit money to earn a financial return.

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(9) "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(10) "Public media" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not prohibited by Section 38.12(d).

(11) "Solicit employment" means to communicate in person or by telephone with a prospective client or a member of the prospective client's family concerning professional employment within the scope of a professional's license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional's license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated by a family member of the person receiving a communication, a communication by a professional who has a prior or existing professional-client relationship with the person receiving the communication, or communication by an attorney for a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by a professional through public media.

(12) "Professional" means an attorney, chiropractor,

physician, surgeon, private investigator, or any other person licensed, certified, or registered by a state agency that regulates a health care profession.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 866, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(14), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 42, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 723, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.103, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 293, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 750, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

- (1) lawfully arrested the person;
- (2) lawfully detained the person; or
- (3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) Except as provided by Subsections (d) and (e), an offense under this section is:

- (1) a Class C misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class B misdemeanor if the offense is committed under Subsection (b).

(d) If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense, the offense is:

- (1) a Class B misdemeanor if the offense is committed under Subsection (a); or
- (2) a Class A misdemeanor if the offense is committed under Subsection (b).

(e) If conduct that constitutes an offense under this section also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1987. Acts 1991, 72nd Leg., ch. 821, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2003.

Sec. 38.03. RESISTING ARREST, SEARCH, OR TRANSPORTATION. (a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another.

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

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

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Acts 1991, 72nd Leg., ch. 277, Sec. 1, 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him.

(b) An offense under this section is a Class B misdemeanor, except that the offense is:

- (1) a state jail felony if the actor uses a vehicle while the actor is in flight and the actor has not been previously convicted under this section;

- (2) a felony of the third degree if:
  - (A) the actor uses a vehicle while the actor is in flight and the actor has been previously convicted under this

section; or

(B) another suffers serious bodily injury as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(3) a felony of the second degree if another suffers death as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight.

(c) In this section, "vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(d) A person who is subject to prosecution under both this section and another law may be prosecuted under either or both this section and the other law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 504, Sec. 1, eff. Sept. 1, 1987. Acts 1989, 71st Leg., ch. 126, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 708, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.240, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1334, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1480, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or *capias*, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony, and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 748, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 11, eff. Sept. 1, 1995; Acts 2005, 79th Leg., ch. 607, Sec. 1, eff. Sept. 1, 2005.

Sec. 38.06. ESCAPE. (a) A person commits an offense if he escapes from custody when he is:

(1) under arrest for, charged with, or convicted of an offense; or

(2) in custody pursuant to a lawful order of a court.

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

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

(1) is under arrest for, charged with, or convicted of a felony;

(2) is confined in a secure correctional facility; or

(3) is committed to a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Youth Commission.

(d) An offense under this section is a felony of the second degree if the actor to effect his escape causes bodily injury.

(e) An offense under this section is a felony of the first degree if to effect his escape the actor:

- (1) causes serious bodily injury; or
- (2) uses or threatens to use a deadly weapon.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1985, 69th Leg., ch. 328, Sec. 1, eff. Sept. 1, 1985. Renumbered from V.T.C.A., Penal Code Sec. 38.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 526, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.07. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of a correctional facility commits an offense if he knowingly permits or facilitates the escape of a person in custody.

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

- (1) an allegation or adjudication of delinquency; or
- (2) involuntary commitment for mental illness under Subtitle C, Title 7, Health and Safety Code, or for chemical dependency under Chapter 462, Health and Safety Code.

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

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

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

(2) was confined in a correctional facility other than a secure correctional facility after conviction of a felony.

(e) An offense under this section is a felony of the second degree if:

(1) the actor or the person in custody used or threatened to use a deadly weapon to effect the escape; or

(2) the person in custody was confined in a secure correctional facility after conviction of a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from V.T.C.A., Penal Code Sec. 38.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.08. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.06 or 38.07 that the custody was unlawful.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from V.T.C.A., Penal Code Sec. 38.09 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.09. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a correctional facility, or provides a person in custody or an inmate with, a deadly weapon or anything that may be useful for escape.

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from V.T.C.A., Penal Code Sec. 38.10 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.10. BAIL JUMPING AND FAILURE TO APPEAR. (a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence.

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

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

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

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from V.T.C.A., Penal Code Sec. 38.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN ADULT OR JUVENILE CORRECTIONAL OR DETENTION FACILITY OR ON PROPERTY OF TEXAS

DEPARTMENT OF CRIMINAL JUSTICE OR TEXAS YOUTH COMMISSION. (a) A person commits an offense if the person provides:

(1) an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except on the prescription of a physician or practitioner, as defined in Section 551.003, Occupations Code;

(2) a deadly weapon to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles;

(3) a cellular telephone or other wireless communications device or a component of one of those devices, cigarette, tobacco product, or money to an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except for money that is provided for the benefit of the juvenile in accordance with facility rules;

(4) a cellular telephone or money to a person confined in a local jail regulated by the Commission on Jail Standards; or

(5) a cigarette or tobacco product to a person confined in a local jail regulated by the Commission on Jail Standards and in providing the cigarette or tobacco product the person violates a rule or regulation adopted by the sheriff or jail administrator that:

(A) prohibits the possession of a cigarette or tobacco product by an inmate confined in the jail; or

(B) places restrictions on:

(i) the possession of a cigarette or tobacco product by an inmate confined in the jail; or

(ii) the manner in which a cigarette or tobacco product may be provided to an inmate confined in the jail.

(b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility or a secure correctional facility or secure detention facility for juveniles, except for delivery to a facility warehouse, pharmacy, or physician.

(c) A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by the Texas Department of Criminal Justice, the Texas Youth Commission, or a secure correctional facility or secure detention facility for juveniles, except for delivery to a warehouse, pharmacy, or physician on property owned, used, or controlled by the department, the commission, or the facility.

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

(1) possesses a controlled substance or dangerous drug while:

(A) on property owned, used, or controlled by the Texas Department of Criminal Justice, the Texas Youth Commission, or a secure correctional facility or secure detention facility for juveniles; or

(B) in a correctional facility or a secure correctional facility or secure detention facility for juveniles; or

(2) possesses a deadly weapon while in a correctional facility or in a secure correctional facility or secure detention facility for juveniles.

(e) It is an affirmative defense to prosecution under Subsection (d)(1) of this section that the person possessed the controlled substance or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the substance or drug to a warehouse, pharmacy, or physician on property owned, used, or controlled by the department, the Texas Youth Commission, or by the operator of a secure correctional facility or secure detention facility for juveniles. It is an affirmative defense to prosecution under Subsection (d)(2) of this section that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

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

(2) "Prescription" has the meaning assigned by Section

481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

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

(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a) or (b), the offense committed under Section 15.01 is a felony of the third degree.

(i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

(1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic beverage; and

(2) takes four ounces or less of an alcoholic beverage into the correctional facility or the secure correctional facility or secure detention facility for juveniles and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) A person commits an offense if the person while an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice or while in the custody of a secure correctional facility or secure detention facility for juveniles possesses a cellular telephone or other wireless communications device or a component of one of those devices.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 5.01, eff. Oct. 1, 1991. Renumbered from V.T.C.A., Penal Code Sec. 38.112 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 362, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 649, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 470, Sec. 1 to 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 499, Sec. 1, eff. June 17, 2005; Acts 2005, 79th Leg., ch. 949, Sec. 47, 48, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2005.

Sec. 38.111. IMPROPER CONTACT WITH VICTIM. (a) A person commits an offense if the person, while confined in a correctional facility after being charged with or convicted of an offense listed in Article 62.001(5), Code of Criminal Procedure, contacts by letter, telephone, or any other means, either directly or through a third party, a victim of the offense or a member of the victim's family, if:

(1) the victim was younger than 17 years of age at the time of the commission of the offense for which the person is confined; and

(2) the director of the correctional facility has not, before the person makes contact with the victim:

(A) received written and dated consent to the contact from:

(i) a parent of the victim;  
(ii) a legal guardian of the victim;  
(iii) the victim, if the victim is 17 years of age or older at the time of giving the consent; or  
(iv) a member of the victim's family who is 17 years of age or older; and

(B) provided the person with a copy of the consent.

(b) The person confined in a correctional facility may not give the written consent required under Subsection (a)(2)(A).

(c) It is an affirmative defense to prosecution under this section that the contact was:

(1) indirect contact made through an attorney representing the person in custody; and

(2) solely for the purpose of representing the person in a criminal proceeding.

(d) An offense under this section is a Class A misdemeanor unless the actor is confined in a correctional facility after being convicted of a felony described by Subsection (a), in which event the offense is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 1337, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 1008, Sec. 2.11, eff. Sept. 1, 2005.

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT. (a) A person commits an offense if, in violation of an order issued under Chapter 7A, Code of Criminal Procedure, the person knowingly:

(1) communicates directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner;

(2) goes to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household; or

(3) possesses a firearm.

(b) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(c) An offense under this section is a Class A misdemeanor. Added by Acts 2003, 78th Leg., ch. 836, Sec. 3, eff. Sept. 1, 2003.

Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY, COUNTY CORRECTIONAL CENTER, OR ASSIGNMENT SITE. (a) A person commits an offense if the person:

(1) is sentenced to or is required as a condition of community supervision or correctional programming to submit to a period of detention or treatment in a community corrections facility or county correctional center;

(2) fails to report to or leaves the facility, the center, or a community service assignment site as directed by the court, community supervision and corrections department supervising the person, or director of the facility or center in which the person is detained or treated, as appropriate; and

(3) in failing to report or leaving acts without the approval of the court, the community supervision and corrections department supervising the person, or the director of the facility or center in which the person is detained or treated.

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

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 12, eff. Sept. 1, 1995.

Sec. 38.114. CONTRABAND IN CORRECTIONAL FACILITY. (a) A person commits an offense if the person:

(1) provides contraband to an inmate of a correctional facility;

(2) otherwise introduces contraband into a correctional facility; or

(3) possesses contraband while confined in a correctional facility.

(b) In this section, "contraband":

(1) means:

(A) any item not provided by or authorized by the operator of the correctional facility; or

(B) any item provided by or authorized by the operator of the correctional facility that has been altered to accommodate a use other than the originally intended use; and

(2) does not include any item specifically prohibited under Section 38.11.

(c) An offense under this section is a Class C misdemeanor, unless the offense is committed by an employee or a volunteer of the correctional facility, in which event the offense is a Class B misdemeanor.

Added by Acts 2005, 79th Leg., ch. 499, Sec. 2, eff. June 17, 2005.

Sec. 38.12. BARRATRY AND SOLICITATION OF PROFESSIONAL EMPLOYMENT. (a) A person commits an offense if, with intent to obtain an economic benefit the person:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain employment as a professional from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family

member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

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

(1) knowingly finances the commission of an offense under Subsection (a);

(2) invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a); or

(3) is a professional who knowingly accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

(c) It is an exception to prosecution under Subsection (a) or (b) that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

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

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state;

(2) with the intent to obtain professional employment for himself or for another, sends or knowingly permits to be sent to an individual who has not sought the person's employment, legal representation, advice, or care a written communication that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the accident or disaster occurred;

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) concerns an arrest of or issuance of a summons to the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the arrest or issuance of the summons occurred;

(D) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication is addressed is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication was mailed;

(E) is sent or permitted to be sent by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be contacted by or receive communications concerning employment;

(F) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(G) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(E), a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) is a felony of the third degree.

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

(h) An offense under Subsection (d) is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d).

(i) Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 866, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 723, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 750, Sec. 2, eff. Sept. 1, 1997.

Sec. 38.122. FALSELY HOLDING ONESELF OUT AS A LAWYER. (a) A person commits an offense if, with intent to obtain an economic

benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

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

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 38.123. UNAUTHORIZED PRACTICE OF LAW. (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or

(5) enters into any contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

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

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

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

(c) An offense under this section is a Class A misdemeanor. Added by Acts 1973, 63rd Leg., p. 833, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER, PAROLE OFFICER, OR COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICER. (a) In this section:

(1) "Firearm" has the meanings assigned by Section 46.01.

(2) "Stun gun" means a device designed to propel darts or other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating a person.

(b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer, parole officer, or community supervision and corrections department officer the officer's firearm, nightstick, stun gun, or personal protection chemical dispensing device with the intention of harming the officer or a third person.

(c) The actor is presumed to have known that the peace officer, parole officer, or community supervision and corrections department officer was a peace officer, parole officer, or community supervision and corrections department officer if the officer was wearing a distinctive uniform or badge indicating his

employment, or if the officer identified himself as a peace officer, parole officer, or community supervision and corrections department officer.

(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer, parole officer, or community supervision and corrections department officer who was using force against the defendant or another in excess of the amount of force permitted by law.

(e) An offense under this section is a felony of the third degree if the defendant took a weapon described by Subsection (b) from an officer described by Subsection (b) and is a state jail felony if the defendant attempted to take the weapon from the officer.

Added by Acts 1989, 71st Leg., ch. 986, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(25), eff. Sept. 6, 1990. Renumbered from V.T.C.A., Penal Code Sec. 38.17 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 322, Sec. 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 1201, Sec. 1, eff. Sept. 1, 2005.

Sec. 38.15. INTERFERENCE WITH PUBLIC DUTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;

(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;

(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes;

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency; or

(6) an officer with responsibility for animal control in a county or municipality, while the officer is performing a duty or exercising authority imposed or granted under Chapter 821 or 822, Health and Safety Code.

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

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code.

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(e) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

Added by Acts 1989, 71st Leg., ch. 1162, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(26), eff. Sept. 6, 1990. Renumbered from V.T.C.A., Penal Code Sec. 38.18 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.241, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 1212, Sec. 1, eff. Sept. 1, 2005.

Sec. 38.151. INTERFERENCE WITH POLICE SERVICE ANIMALS. (a) In this section:

(1) "Area of control" includes a vehicle, trailer, kennel, pen, or yard.

(2) "Handler or rider" means a peace officer, corrections officer, or jailer who is specially trained to use a police service animal for law enforcement, corrections, prison or jail security, or investigative purposes.

(3) "Police service animal" means a dog, horse, or other domesticated animal that is specially trained for use by a handler or rider.

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

- (1) taunts, torments, or strikes a police service animal;
- (2) throws an object or substance at a police service animal;
- (3) interferes with or obstructs a police service animal or interferes with or obstructs the handler or rider of a police service animal in a manner that:
  - (A) inhibits or restricts the handler's or rider's control of the animal; or
  - (B) deprives the handler or rider of control of the animal;
- (4) releases a police service animal from its area of control;
- (5) enters the area of control of a police service animal without the effective consent of the handler or rider, including placing food or any other object or substance into that area;
- (6) injures or kills a police service animal; or
- (7) engages in conduct likely to injure or kill a police service animal, including administering or setting a poison, trap, or any other object or substance.

(c) An offense under this section is:

- (1) a Class C misdemeanor if the person commits an offense under Subsection (b)(1);
- (2) a Class B misdemeanor if the person commits an offense under Subsection (b)(2);
- (3) a Class A misdemeanor if the person commits an offense under Subsection (b)(3), (4), or (5);
- (4) a state jail felony if the person commits an offense under Subsection (b)(6) or (7) by injuring a police service animal or by engaging in conduct likely to injure the animal; or
- (5) a felony of the third degree if the person commits an offense under Subsection (b)(6) or (7) by killing a police service animal or by engaging in conduct likely to kill the animal.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.16. PREVENTING EXECUTION OF CIVIL PROCESS. (a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.

(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.

(c) An offense under this section is a Class C misdemeanor. Added by Acts 1995, 74th Leg., ch. 318, Sec. 13, eff. Sept. 1, 1995.

Sec. 38.17. FAILURE TO STOP OR REPORT AGGRAVATED SEXUAL ASSAULT OF CHILD. (a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:

- (1) the actor observes the commission or attempted commission of an offense prohibited by Section 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;

- (2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and

- (3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor. Added by Acts 1999, 76th Leg., ch. 1344, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.171. FAILURE TO REPORT FELONY. (a) A person commits an offense if the person:

- (1) observes the commission of a felony under circumstances in which a reasonable person would believe that an offense had been committed in which serious bodily injury or death may have resulted; and

- (2) fails to immediately report the commission of the offense to a peace officer or law enforcement agency under circumstances in which:

- (A) a reasonable person would believe that the commission of the offense had not been reported; and

- (B) the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor. Added by Acts 2003, 78th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2003.

Sec. 38.18. USE OF ACCIDENT REPORT INFORMATION AND OTHER INFORMATION FOR PECUNIARY GAIN. (a) This section applies to:

(1) information described by Section 550.065(a), Transportation Code;

(2) information reported under Chapter 772, Health and Safety Code, other than information that is confidential under that chapter; and

(3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under Chapter 772, Health and Safety Code.

(b) A person commits an offense if:

(1) the person obtains information described by Subsection (a) from the Department of Public Safety of the State of Texas or other governmental entity; and

(2) the information is subsequently used for the direct solicitation of business or employment for pecuniary gain by:

(A) the person;

(B) an agent or employee of the person; or

(C) the person on whose behalf the information was requested.

(c) A person who employs or engages another to obtain information described by Subsection (a) from the Department of Public Safety or other governmental entity commits an offense if the person subsequently uses the information for direct solicitation of business or employment for pecuniary gain.

(d) An offense under this section is a Class B misdemeanor. Added by Acts 2001, 77th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.19. FAILURE TO PROVIDE NOTICE AND REPORT OF DEATH OF RESIDENT OF INSTITUTION. (a) A superintendent or general manager of an institution commits an offense if, as required by Article 49.24 or 49.25, Code of Criminal Procedure, the person fails to:

(1) provide notice of the death of an individual under the care, custody, or control of or residing in the institution;

(2) submit a report on the death of the individual; or

(3) include in the report material facts known or discovered by the person at the time the report was filed.

(b) An offense under this section is a Class B misdemeanor. Added by Acts 2003, 78th Leg., ch. 894, Sec. 4, eff. Sept. 1, 2003.