



Penal Code and Laws

Law Enforcement Explorers Post 500

Texas Law

Civil Laws

Laws can be either civil (enforceable by a civil court) or criminal (enforceable by peace officers through arrests and criminal courts). A person commits a wrong, or tort, when they do something to another person or to their property. In many instances, there is a criminal law that covers the actions of the person; it is then enforceable by the criminal courts through arrest. If there is no criminal law in place, it is handled through the civil courts. Property disputes, marital issues, custody issues, are all handled through the civil courts and are not enforceable by the Sheriff's Department.

The Sheriff's Department handles and has jurisdiction over criminal laws.

Civil law includes disputes over property, landlord tenant disputes, and child custody disputes. The most common areas that the Sheriff's department is called about are property and custody disputes. Again, the Sheriff's department has no jurisdiction over civil disputes; these must be handled through the appropriate court.

- **Civil Warrants**

Warrants issued by a civil court must be served by a process server, a deputy, or a constable. The Sheriff's Department has a civil process server, and we will, at times, serve a civil warrant. No civil warrants are included in the computer system; you will never receive a "hit" through the computer system when running a person for warrants (the system contains only criminal warrants).

- **Family Code**

Court orders and citations issued through the Family Code are enforceable by the court only. Child custody, divorces, etc. are handled through the Family Code. The most common calls we get are property disputes in divorce proceedings and child custody questions.

Most commonly, a citizen will call and say that their ex-spouse won't give up their children for visitation. The Sheriff's department has no authority to enforce visitation or custody.

Another common call the Sheriff's department receives is property disputes by married couples; a man and woman separate, and then one subject destroys, removes, or sells property. As married persons, the community property rights apply, and either subject legally has care, custody, or control over the property, irrespective of what the property is or who it might "belong" to (for instance, the husband has the legal right to sell or destroy his wife's dresses). Since there is no criminal violation, we have no jurisdiction. Likewise, after a divorce, property disputes (most commonly, one person has been given property in a decree, and doesn't want to give the property up) are handled by the court issuing the decree, not through the criminal courts. Again, the Sheriff's department has no jurisdiction.

When in doubt over whether a particular circumstance is civil or criminal, send a deputy. The deputy can make the appropriate determination and refer the complainants to the appropriate court.

- Civil Process

Civil Processes are those citations or warrants issued by a civil court in response to a lawsuit, and usually require a person to answer in court. Similar to a subpoena, they may require not only a person appear in court, but bring some disputed property with him. The Civil process division of the Sheriff's department will sometimes leave civil papers in the communications office for serving on an individual that has agreed to come to the Sheriff's department and be served. A peace officer must serve the paper (either a deputy, a commissioned jailer, or any other commissioned peace officer).

Criminal Laws

Criminal laws are enforced by peace officers and the criminal courts.

- Criminal Warrants

Criminal warrants are directed to "Any Peace Officer of the State of Texas" and any peace officer may arrest, on sight, a person that has a valid warrant issued for them by a court. Warrants issued by the county court, district court, justice of the peace, or municipalities are criminal warrants.

- Criminal Process

Warrants may be served "on-sight" when a peace officer has knowledge that the warrant is valid; the peace officer does not have to have the warrant in-hand.

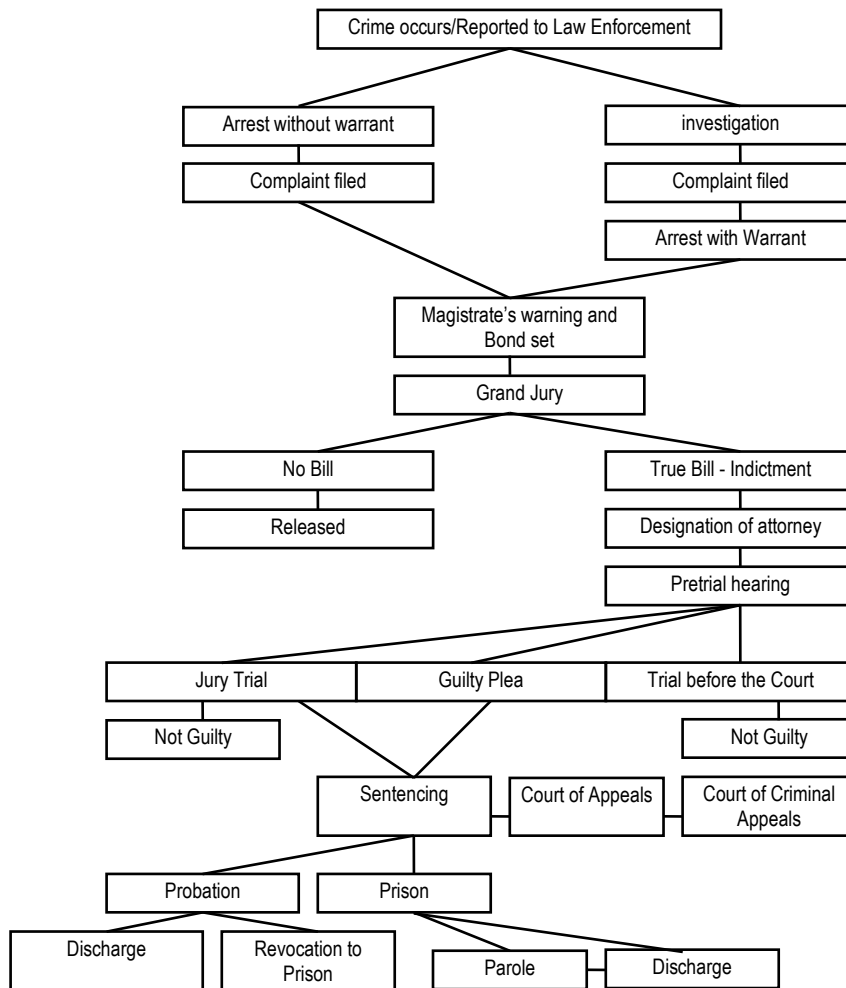
Warrants may be issued after a complaint has been filed in the appropriate court; the judge will issue the warrant of arrest. Warrants may also be issued by the court for withdrawal of bonds, violation of probation, etc. All warrants are issued by a court.

After arrest, a person may post bond ensuring that he or she will appear in court. After release, if the person appears in court as directed, the bond is refunded. If they fail to appear, a warrant will be issued for Bond Withdrawal and/or Failure to Appear.

Generally, our criminal laws define crimes, the punishment for each, and the available defenses.

Criminal laws are passed by the Texas Legislature subject to the approval of the governor. Usually, the lawmakers add new crimes or increase the punishment for old crimes based upon current trends, such as drive-by shootings or increased gang activities.

A simplified diagram flow charting the Criminal Process is as follows; notice that if an officer does not arrest without a warrant, an investigation, complaint, and warrant follows. For misdemeanor offenses, there is no Grand Jury.



There are four basic places where criminal laws are found:

- The **Texas Penal Code** defines the vast majority of crimes. It also indicates the basic punishment and defines most defenses, such as insanity and self-defense.
- The **Controlled Substances Act**, part of the Texas Health and Safety Code, contains all drug laws.
- Minor criminal violations of specific regulations dot other Texas laws. Some, such as traffic and game laws, are voluminous and very detailed.
- Local city ordinances that define minor offenses which can be punished by a fine only.

Penal Code

The Texas Penal Code breaks crimes into offenses against:

- the person; examples: murder, sexual assault

- property; examples: robbery, burglary, theft
- public administration; examples: bribery, perjury
- public health, safety, and morals; examples: DWI, unlawfully carrying a weapon

Controlled Substances Act

The Controlled Substances Act defines all drug crimes. It also classifies hundreds of drugs as controlled substances and divides them into one of four penalty groups. Penalty Group 1, the most serious group, includes heroin, cocaine, LSD, and methamphetamine.

The Controlled Substances Act lists four basic crimes:

- delivery of a controlled substance
- possession of a controlled substance
- delivery of marijuana
- possession of marijuana

Delivery means manufacturing the drugs, selling the drugs, or possessing the drugs with intent to sell.

The punishment under each of these four groups is based upon the amount of the drug and the penalty group of the drug.

Other Laws

Many criminal laws are contained in specific regulations such as the Transportation Code and the Fish and Game Code. While these are criminal violations, they are extremely minor and seldom involve a victim.

For example, the Transportation Code has a law for Failure to Stop and Render Aid. This law is frequently used when drivers flee an injury collision and are found too late to prove intoxication. Failure to Stop and render Aid lets them be prosecuted for a felony.

Punishments

All crimes are either felonies or misdemeanors. There are three misdemeanor categories and five felony categories.

Punishment ranges may increase when a defendant has prior convictions. Use of prior convictions in this manner is called enhancement. Enhancements must be set out in the indictment or information and proved in court. (See table, next page)

PUNISHMENT RANGES and ENHANCEMENTS

CAPITAL FELONY <ul style="list-style-type: none"> death life imprisonment 		Same PRIOR LAW
FIRST DEGREE FELONY <ul style="list-style-type: none"> confinement for life or a term from 5 - 99 years in prison; and an optional fine not to exceed \$10,000 		Same
SECOND DEGREE FELONY <ul style="list-style-type: none"> confinement for a term for 2 - 20 years in prison; and an optional fine not to exceed \$10,000 		Same
THIRD DEGREE FELONY <ul style="list-style-type: none"> confinement for a term from 2 - 10 years in prison; and an optional fine not to exceed \$10,000 		Committed 09/01/89 to 08/31/94: Same, except includes option of confinement up to one year in a community correctional facility.
STATE JAIL FELONY (SJF) (offense after 12/31/95) <ul style="list-style-type: none"> confinement for a term from 180 days to 2 years in a state jail; and an optional fine not to exceed \$10,000 Community Supervision by a judge for 2 - 5 years: <ul style="list-style-type: none"> mandatory if no prior felony conviction discretionary if prior felony conviction Up front confinement: <ul style="list-style-type: none"> up to 90 days in county jail; 90 - 180 days in state jail; or 90-365 days in state jail if delivery of penalty group 1 - 2 controlled substance or marijuana. 		Offense 09/01/94 to 12/31/95: Same, except: <ul style="list-style-type: none"> mandatory community supervision, regardless of criminal history Up front confinement: <ul style="list-style-type: none"> up to 30 days in county jail or 60 days state jail if no prior felony conviction; up to 60 days in county jail or 180 days state jail if one prior felony conviction; or up to 1 year state jail if two prior felony convictions or delivery of penalty group 1 controlled substance.
CLASS A MISDEMEANOR <ul style="list-style-type: none"> confinement for term not to exceed 1 year in county jail; and/or a fine not to exceed \$4,000.00 		Offense 09/01/91 - 08/31/94: \$3,000 Offense before 09/01/91: \$1,000
CLASS B MISDEMEANOR <ul style="list-style-type: none"> confinement for term not to exceed 180 days in county jail; and/or a fine not to exceed \$2,000.00 		Offense 09/01/91 - 08/31/94: \$1,500 Offense before 09/01/91: \$1,000
CLASS C MISDEMEANOR <ul style="list-style-type: none"> no confinement a fine not to exceed \$500.00 		Offense before 09/01/91: \$200.
NON SJF ENHANCEMENTS 1 Prior Felony conviction: 3 rd degree → 2 nd degree 2 nd degree → 1 st degree 1 st degree → 15-99 or life/\$10,000 2 Prior Felony Convictions 1 st , 2 nd , or 3 rd degree → 25 - 99 or life 1 Prior Class A or Felony: Class A → 90 days - 1 yr, and/or maximum \$4,000 fine 1 Prior Class A, B, or Felony: Class B → 30 - 180 days and/or maximum \$2,000 fine.	SJF ENHANCEMENTS (offense after 12/31/95) Use of deadly weapon or prior 3g or deadly weapon: SJF → 3 rd degree 2 Prior Final SJF Convictions: SJF → 3 rd degree Deadly Weapon finding or prior 3g or deadly weapon finding and one prior felony conviction: SJF → 2 nd degree 2 prior felony convictions SJF → 2 nd degree	"3G OFFENSES" <ul style="list-style-type: none"> aggravated kidnapping aggravated robbery aggravated sexual assault indecent with child (contact) murder sexual assault of a child any felony with deadly weapon affirmative finding PAROLE ELIGIBILITY <ul style="list-style-type: none"> Non 3g=25% of sentence, including good conduct. (Life and 60+ sentence calculated as 60 year sentence) 3g=50% of sentence, without good conduct, up to 30 years Capital murder=40 calendar years, without good conduct.

Specific Crimes

The Penal Code and the Controlled Substances Act contain more than a hundred crimes. Many of these crimes have substantial subsections which carry different punishments. Counting these subsections, the criminal laws define several hundred crimes.

The following table breaks down many of the offenses into their penalty classification.

CRIME CLASSIFICATIONS

<p>FIRST DEGREE FELONIES</p> <ul style="list-style-type: none"> • Aggravated Assault by deadly weapon (DW) or serious bodily injury (SBI) (against a public servant or retaliation) • Aggravated kidnapping (no voluntary safe release) • Aggravated Robbery • Aggravated Sexual Assault • Attempted Capital Murder • Burglary of a Habitation (intent = felony other than theft) • Escape (DW or SBI) • Injury to a Child, Elderly, or Disabled (intentionally or knowingly causing SBI) • Murder (no sudden passion) 	<p>SECOND DEGREE FELONIES</p> <ul style="list-style-type: none"> • Aggravated assault by DW or SBI (not against a public servant) • Aggravated Kidnapping (voluntary safe release) • Arson • Bribery • Burglary of a Habitation (intent = theft) • Escape (Bodily Injury) • Indecency with a Child (contact) • Injury to a Child, Elderly, or Disabled (recklessly SBI) • Manslaughter • Murder (sudden passion) • Robbery • Sexual Assault 	<p>THIRD DEGREE FELONIES</p> <ul style="list-style-type: none"> • Aggravated Assault bodily injury (against a public servant or retaliation) • Aggravated Perjury • Bail Jumping (felony arrest) • Deadly Conduct (discharged firearm) • Escape (felony arrest or secure correctional facility) • Firearm possession by felon • Forgery (govt. document) • Indecency with a Child (exposure) • Injury to a Child, Elderly, or Disabled (intentionally or knowingly causes Bodily Injury) • Kidnapping • Poss. of Prohibited Weapon • Poss. of Weapon (prohibited place) • Tampering with Evidence • Unlawfully carrying Weapon (license holder) 	<p>STATE JAIL FELONIES</p> <ul style="list-style-type: none"> • Burglary of a Building • Credit/Debit Card Abuse • Criminal Nonsupport • Criminally Negligent Homicide • False Alarm or Report • Forgery (commercial instrument) • Injury to a Child, Elderly, or Disabled (recklessly causes bodily injury or negligently SBI) • Interference with Child Custody • Tampering with a Witness • Unauthorized absence from Correctional facility • Unauthorized use of vehicle <p><u>CONTROLLED SUBSTANCES Delivery (Penalty Group 1)</u></p> <p style="text-align: center;"><1g=SJF 1-<4g=3rd degree 4-200g=2nd degree 200-<400g=10-99/ life/\$100k 400g+=15-99/ life/\$100k</p> <p><u>Possession (PG 1)</u></p> <p style="text-align: center;"><1g=SJF 1-<4g=3rd degree 4-200g=2nd degree 200-<400g=1st degree 400g+=10-99/ life/\$100k</p> <p><u>Delivery of Marijuana</u></p> <p style="text-align: center;">≤ ¼ oz=Class B ≤ ¼ oz remuneration=Class A > ¼ oz -5 lb = SJF >5 - 50 lbs = 2nd degree > 50 - 2,000 lbs=1st degree >2000+lbs = 10-99/ life/\$100k</p> <p><u>Possession of Marijuana</u></p> <p style="text-align: center;">≤ 2 oz=Class B > 2 oz -4 oz = Class A >4 oz - 5 lbs = SJF > 5 - 50 lbs=3rd degree >50-2000 lbs = 2nd degree >2000+lbs=5-99/ life/\$50k</p>
<p>CLASS A MISDEMEANORS</p> <ul style="list-style-type: none"> • Assault with bodily injury • Bail jumping (misd A or B) • Burglary of a Coin Machine • Cruelty to Animals • Deadly conduct (no discharge firearm) • Escape (misd. arrest) • Forgery • Gambling Paraphernalia • Obscenity • Perjury • Poss. of prohibited weapon (switchblade or knuckles) • Public lewdness • Resisting arrest • Stalking • Unlawfully Carrying a Weapon • Violation of Protective Order 	<p>CLASS B MISDEMEANORS</p> <ul style="list-style-type: none"> • Criminal Trespass • Disorderly Conduct (some) • Enticing a Child • Evading Arrest or Detention (no vehicle or injury) • Failure to Identify (fugitive) • False Imprisonment • False Report to Peace Officer • Harassment • Indecent Exposure • Prostitution • Riot • Silent or Abusive 9-1-1 • Terroristic Threat 	<p>CLASS C MISDEMEANORS</p> <ul style="list-style-type: none"> • Assault (threat or off. Contact) • Bail Jumping (misd. C) • Disorderly Conduct • Failure to Identify • Gambling • Issuance of a Bad Check • Obscene Display or Distribution • Leaving Child in Vehicle • Preventing Execution of Civil Process • Public Intoxication 	
<p>VALUE LADDER (THEFT, CRIMINAL MISCHIEF, ETC.)</p> <p><\$50 (theft of property not by check) = Class C Misdemeanor 50-<500 (theft of property not check) = Class B Misdemeanor <20 = Class C Misdemeanor 20-<500=Class B Misdemeanor 500-<1500=Class A Misdemeanor 1500-<20,000=State Jail Felony 20,000-<100,000=3rd degree Felony 100,000-<200,000=2nd degree Felony 200,000+=1st degree Felony</p>		<p>INTOXICATION OFFENSES</p> <p>DWI (1st offense) = Class B Misdemeanor (3 day minimum)</p> <p>DWI (2nd offense)=Class A Misdemeanor (30 day minimum)</p> <p>DWI (3rd offense)=3rd degree felony</p> <p>Intoxication Assault=3rd degree felony</p> <p>Intoxication Manslaughter=2nd degree felony</p>	

Homicide

Homicide is the unlawful taking of another individual's life. The law defines individual as a person who was born and is alive. Assaults on a pregnant woman that results in the death of the fetus can be prosecuted only as a crime against the woman.

Murder: Murder occurs when a person:

- intends to cause or knowingly causes the death
- does not intend the death but does intend serious bodily injury and commits an act clearly dangerous to human life.
- does not intend the death but does intent some other felony and commits an act clearly dangerous to human life.

Murder is a first degree felony. However, at the punishment phase, the defendant may offer proof that he committed the murder "under the immediate influence of sudden passion arising from an adequate cause." If the jury finds this to be true, the crime becomes a second degree felony.

Capital murder: Capital murder is an intentional murder under one of eight special circumstances:

- murder of an on-duty peace officer or fireman
- murder while committing kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction, or retaliation
- murder for hire
- murder while escaping from a prison or jail
- murder by a prison or jail inmate either of an employee or as part of gang activity
- murder while incarcerated for murder or capital murder or while serving life of ninety-nine years for aggravated kidnapping, aggravated sexual assault, or aggravated robbery
- murder of more than one person during the same transaction or scheme
- murder of a child under 6

Capital murder is punishable for either life or death. At the punishment phase of a capital murder trial, the jury is asked two questions:

- Is the defendant a continuing threat to society?
- Does mitigating evidence justify a sentence of life rather than the death penalty?

Mitigating evidence includes the circumstances of the offense and the defendant's character and background. If the jury answers yes to the first question and no to the second, the judge sentences the defendant to death. If the jury answers either no to the first question or yes to the second, the judge sentences the defendant to life.

Manslaughter: A person recklessly (rather than intentionally or knowingly) causes the death of an individual. Recklessly means a major departure from acceptable conduct, such as driving a car 100 mph in a school zone. Manslaughter is a second degree felony.

Criminally Negligent Homicide: A person negligently causes the death of an individual. A negligent defendant was not but should have been aware of a major departure from acceptable conduct. For example, the defendant failed to place an infant in a car seat before a collision that resulted in the infant's death. Criminally negligent homicide is a state jail felony.

Kidnapping

Kidnapping: A kidnapper takes or holds a person against his or her will. Legal defenses let relatives peaceably assume lawful control of a child.

Aggravated Kidnapping: Kidnapping becomes aggravated kidnapping when used:

- for ransom or reward
- for a shield or as a hostage
- as part of another felony
- to physically injure or sexually abuse
- to terrorize the victim or another
- to interfere with a governmental or political function

Aggravated kidnapping is a first degree felony. At the punishment phase of the trial, the defendant may offer evidence that he voluntarily released the victim in a safe place. If the jury finds this to be true, the crime becomes a second degree felony.

Child Molesting

Child molesting is a general term which refers to any sexual offense against a child. The age of the victim at the time of the offense is part of the definition of the crime. “Younger than 17” means the age of 16 up until the 17th birthday.

Indecency with a Child: indecency with a child can either be “by contact” or “by exposure”.

Indecency

- By contact means touching for sexual purposes of the anus, breast, or any part of the genitals of a child younger than seventeen.
- By exposure means exposure for sexual purposes of the anus or any part of the genitals knowing that a child under seventeen is present.

In either case, consent is not relevant. The child’s acquiescence or even initiation of the incident is no defense.

Two exceptions: spouses cannot be victims. Also, it is a defense that the defendant was not more than three years older than the victim and did not have to use force or threats.

Sexual Assault of a Child: During sexual assault, a sexual organ or an object penetrates or contacts a mouth, anus, or other sexual organ. The victim must be a child under age seventeen and not be the spouse of the defendant.

As with indecency with a child, consent is not an issue. It is again a defense that the defendant was not more than three years older than the victim and did not use force or threats.

Note: a promiscuity defense that applied to victims fourteen years or older was eliminated after August 30, 1994.

Aggravated Sexual Assault of a Child: Sexual assault of a child becomes aggravated sexual assault when the victim is younger than fourteen. As with other child-molesting laws, consent is not an issue.

Sexual Assaults of Adults

Sexual assaults, or rapes, are prosecuted under either the sexual assault or aggravated sexual assault laws. Unlike child molesting laws which protect children under seventeen, consent is an issue. The state must prove a lack of consent.

Sexual Assault: A sexual assault occurs when the person knowingly or intentionally:

- penetrates the anus or female sexual organ by any means
- penetrates the victim's mouth with the defendant's sexual organ
- causes the victim's sexual organ to contact or penetrate the mouth, anus, or sexual organ of the defendant or any other person.

What is lack of consent? Legally, it's when the assailant:

- uses physical force or violence
- threatens force or violence that the victim believes could be carried out
- knows the victim is unconscious or physically unable to resist
- knows the victim is unaware the sexual assault is happening
- knows the victim is mentally infirm and unable to resist or understand what is happening
- has given the victim a substance, without the victim's knowledge, that impairs the victim's ability to understand or resist
- threatens force or violence to another person that the victim believes could be carried out
- is a public servant who coerces the victim to submit or participate

Evidence of previous sexual conduct of the victim is generally not admissible in a trial involving a sexual assault. A narrow exception allows such evidence:

- when rebutting (explaining) scientific or medical evidence offered by the prosecutor
- when the previous sexual conduct is with the defendant and is relevant to consent
- when it relates to a motive or bias of the victim

Defense attorneys who want to ask such questions must first have the judge hear the evidence without the jury. The judge must find that it meets one of these exceptions before the jury can hear these questions answered.

Aggravated Sexual Assault: Sexual assault becomes aggravated sexual assault when the assailant:

- causes serious bodily injury or attempts to kill the victim or someone else
- by acts or words places the victim in fear of death, serious bodily injury, or kidnapping will immediately happen to the victim or someone else
- by acts or words in the presence of the victim threatens the death, serious bodily injury, or kidnapping of any person
- uses or exhibits a deadly weapon
- the victim is 65 years of age or older

Assault

Assault: Assault can be committed when a person knowingly or intentionally:

- causes bodily injury to the victim, a Class A misdemeanor
- threatens imminent bodily injury, a Class C misdemeanor
- causes an offensive or provocative contact to the victim, a Class C misdemeanor

Bodily injury means physical pain, illness, or impairment of physical condition.

Aggravated Assault: An assault becomes aggravated when (1) the injury caused is serious bodily injury or (2) the assailant uses or exhibits a deadly weapon during the commission of the assault. Serious bodily injury includes death or any injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Most aggravated assaults are second degree felonies. They become first degree felonies if:

- the assailant is a public servant acting within his employment
- the victim is known by the assailant to be a public servant performing his duties or the assailant is retaliating for some official duty carried out by the public servant
- the assailant is retaliating against a victim on account of the victim's service as a witness, prospective witness, informant, or person who reported a crime

Public servant is any employee or agent of the government including jurors, and candidates of election to public offices.

Injury to a Child, Elderly individual or disabled individual: This crime involves serious bodily injury, serious mental injury or bodily injury. The person may act intentionally, knowingly, recklessly, or with criminal negligence. This crime, like most crimes, requires an action by the person, but it can also be committed by failing to do something if the person has a legal obligation to do so. For example, it is a crime for a parent to starve a young child.

Each of the victims has a specific definition. Child is a person under fifteen, elderly is sixty-five or older, disabled individual is a person over fourteen who is substantially unable to protect or care for himself.

Harassment

The harassment law deals primarily with telephone harassment although some forms of written harassment are also covered. In 1993, the Legislature added stalking to the forms of harassment. This stalking law was declared unconstitutional because it was too broad; a narrower law was passed in early 1997.

Harassment: The crime of harassment is committed when the harasser intends to harass, annoy, alarm, abuse, torment, or embarrass the victim. The harasser must:

- call or write the victim with an obscene comment
- call or write with a threat to commit bodily injury or a felony
- falsely report serious bodily injury or death knowing that the report is false
- repeatedly call anonymously or cause the victim's phone to ring repeatedly
- intentionally fail to hang up after a call
- allow someone else to use the phone for any of the above purposes

Harassment is a Class B misdemeanor.

Stalking: Stalking is a form of harassment. It involves, on more than one occasion, conduct that both reasonably and actually causes a victim to fear that death or bodily injury will be committed on the victim or a member of the victim's household or that the victim's property will be destroyed.

Stalking is a Class A misdemeanor. A second conviction for stalking is a third degree felony.

Terroristic Threat

Similar to harassment, terroristic threat involves violence to any person or property with the intent to cause a reaction of any type by an official or volunteer agency. Bomb threats fall into this category. The key elements of the offense also include:

- The threat places any person in fear of imminent serious bodily injury; or
- The threat prevents or interrupts the use of a building, room, or any place the public has access to; or
- The threat causes impairment or interruption of any public service.

Terroristic threat is a Class B Misdemeanor.

Domestic Violence

Domestic violence is assault committed against a family member. Family members are defined as spouses, former spouses, cohabitants, former cohabitants, or a person whom the suspect has had, or has a child, or has had, or has a "dating" or engagement relationship.

There is no direct penalty for Domestic Violence, as it is a specific type of assault. Persons committing domestic violence are charged with assault or aggravated assault.

Violation of Protective Order

A person who has had a protective order issued against them and then violates the terms of the protective order has committed the offense of Violation of Protective Order. Generally, they must intentionally commit family violence, communicate in a threatening manner with the protected person or through a third party.

Violation of a Protective Order is a Class A misdemeanor.

Deadly Conduct

If a person recklessly engages in conduct that places another person in danger of serious bodily injury, he has committed the offense of deadly conduct. Similar to the Injury to a Child statute, by failing to do something a person can be charged with deadly conduct. Also, if a person discharges a firearm at or in the direction of one or more individuals or at a habitation, building, or vehicle (a drive-by shooting where no one was injured would constitute deadly conduct).

Deadly is a Class A Misdemeanor, unless a firearm was used, in which case it is a Third Degree Felony.

Robbery

A robber takes property from a victim by force or threat. It is often confused with burglary and theft. A burglar enters a vehicle or structure to commit a theft. A thief takes property or services.

Robbery: A robbery occurs when someone in the course of committing theft:

- causes bodily injury to another
- threatens or places another in fear of imminent bodily injury or death

Robbery is a second degree felony.

Aggravated robbery: Robbery becomes aggravated when the robber:

- causes serious bodily injury to a victim
- uses or exhibits a deadly weapon
- robs an older (over 65) or disabled victim

Aggravated robbery is a first degree felony.

Burglary

Burglary involves an illegal entry of a habitation, building, or vehicle. Texas law also provides protection against the related crime of criminal trespass.

Burglary of a building: A person enters a building and, with or without intent, commits any felony or theft. This can include a portion of a building not open to the public. The entry must be without the consent of the owner.

The punishment for burglary depends on the type of structure entered and the intent of the burglar.

- Burglary is a state jail felony if the burglar entered a building other than a habitation.
- Burglary of a habitation (any structure or vehicle adapted for overnight use by people) is a second degree felony if the burglar intended to commit theft.
- Burglary of a habitation is a first degree felony if the burglar intended to commit any felony other than theft. For example, some house burglars intend to commit sexual assault or other acts of violence.

Burglary of a vehicle: Burglary of a vehicle includes any entry into a vehicle or part of a vehicle with intent to commit a felony or theft. The entry must be without the consent of the owner. Burglary of a vehicle is a Class A misdemeanor.

Criminal Trespass: Criminal trespass occurs when a person enters or remains on property or in a building without consent from the owner or person in charge of the property. The trespasser must have notice to leave or notice that entry is forbidden. This notice can be given by:

- oral or written communication to the trespasser
- fencing or other enclosure obviously designed to exclude intruders
- a sign indicating that trespass is forbidden
- placement of identifying purple paint marks on trees or posts at least 8x1”
- presence of a crop grown for human consumption that is under cultivation, being harvested, or marketable

Criminal trespass is a Class B misdemeanor. It becomes a Class A misdemeanor if it is committed in a habitation or if the defendant has a deadly weapon.

Theft

Texas’ theft laws cover a wide range of taking another’s property, including various forms of fraud. Theft can involve property (such as real estate or personal property) or services (such as labor or hotel lodgings).

- **Theft of property**: Theft requires some form of taking control of property or transferring it. Theft also requires at least one additional circumstance, that the thief:

- lacks effective consent from the owner
- receives property he knows another stole
- receives property from a law enforcement agent who represented it as stolen

The punishment range for theft depends on the value of the property stolen (except for firearms. Firearms fall into a special category depending on the number of firearms stolen).

<i>Value Ladder</i>	
Less than \$50 (\$20).....	Class C Misdemeanor
\$50 (\$20) to less than \$500.....	Class B Misdemeanor
\$500 to less than \$1500.....	Class A Misdemeanor
\$1500 to less than \$20,000.....	State Jail Felony
\$20,000 to less than \$100,000.....	Third Degree Felony
\$100,000 to less than \$200,000.....	Second Degree Felony
\$200,000 or more.....	First Degree Felony

Note: for theft of property only, the division between a class C and B misdemeanor is \$50. The division for theft by check and theft by service and other value ladder offenses is \$20.

Value of property is the fair market value when it is stolen. Replacement value can be used only if a fair market value cannot be determined.

If the theft is part of an overall scheme or course of conduct, theft amounts can be aggregated or totaled. For example, a defendant who stole 10,000 fake raffle tickets for \$1 each could be prosecuted for a single state jail felony rather than 10,000 Class C Misdemeanors.

Theft of Services: Theft of services is very similar to the regular theft law. Some special provisions make it easier for prosecutors to prove theft from a hotel, restaurant, or rental property. The value ladder and punishment ranges are the same as for theft (with the C/B break at \$20).

Unauthorized Use of Vehicle (UUMV): It is a crime to operate a boat, airplane, or motor-propelled vehicle without the owner’s consent. This law is usually used to prosecute vehicle theft because it is necessary to only prove that the thief was operating the vehicle, not that he actually took it.

The value ladder does not apply to this crime. All unauthorized uses of vehicles are state jail felonies.

Damage to Property

Criminal Mischief (vandalism), Reckless Damage or Destruction, and Arson are the primary laws dealing with damage to property.

Criminal Mischief: Criminal mischief, or vandalism, occurs when a person intentionally or knowingly causes damage to someone else’s property. There must be no consent from the owner. Criminal mischief offenses include:

- Tampering with property causing loss or damage
- Tampering with property causing substantial inconvenience
- Intentionally making marks, including inscriptions, slogans, drawings, or paintings on the property of another.

The value of the damaged property falls into the value ladder used for theft, except for livestock and fences used to hold livestock. The “substantial inconvenience” is a Class C Misdemeanor (this would include any act where there was no monetary loss. For instance, letting the air out of someone’s tires).

Reckless Damage or Destruction: Reckless damage or destruction is similar to criminal mischief, except there is no intent to cause the damage. The person must act recklessly, in that he should have known that his actions could cause damage. Reckless damage or destruction is a Class C Misdemeanor.

Arson: Arson is the willful setting of a fire, or the willful causing of an explosion with the intent to destroy or damage any vehicle, vegetation, fence or structure. A person commits arson if they are reckless about whether the burning or explosion will endanger the life of any individual or the safety or property of another.

Arson is a Second Degree Felony.

Intoxication Offenses

Intoxication offenses were changed significantly, effective September 1, 1994. The changes dramatically increased the punishments for DWI’s that cause serious bodily injury or death.

“Intoxication” does not mean “drunk”. The legal definition of “intoxication” includes a person who does not have the “normal use of mental or physical faculties” because of any substance in the body. This substance can be alcohol, legal or illegal drugs, any other substance, or a combination of substances. Intoxication can also be established by showing a blood alcohol concentration of 0.10 or more. This 0.10 is roughly equivalent to a one-hundred-fifty pound person consuming five beers or mixed drinks in one hour.

Driving While Intoxicated (DWI): A person commits DWI driving or operating a motor vehicle in a public place while intoxicated. Parallel laws make it illegal to operate an aircraft or watercraft while intoxicated.

This Class B Misdemeanor carries a minimum punishment of seventy-two hours confinement. This minimum increases to six days if the driver has an open container of alcohol in his immediate possession. A second DWI is a Class A Misdemeanor with a minimum thirty days confinement. Third and subsequent DWIs are third degree felonies.

Intoxication Assault: A person commits intoxication assault when driving, flying, or boating while intoxicated and by reason of that intoxication causes serious bodily injury to another person. Intoxication assault is a third degree felony.

Before intoxication assault became the law, such cases had to be prosecuted as DWIs. Even in situations where one or more victims were left paralyzed for life, the maximum punishment was a misdemeanor jail sentence. Intoxication assault helps to recognize the terrible effect this crime can have on victims and their families.

Intoxication Manslaughter: A person commits intoxication manslaughter when driving, flying, or boating while intoxicated and by reason of that intoxication caused death to another person. Intoxication manslaughter is a second degree felony.

Intoxication manslaughter is a renamed version of involuntary manslaughter. The only difference between the current law and the old law is that the punishment increased from a third degree felony to a second degree felony.

Disturbances

A “disturbance” covers a multitude of possible offenses; under the Texas Penal Code, most fall into the Disorderly Conduct statutes. These statutes include:

- fighting in a public place (mutual combat).
- challenging a person to a fight in a public place.
- using obscene language in a public place and the language tends to incite an immediate breach of the peace.
- makes an offensive gesture in a public place and the gesture tends to incite an immediate breach of the peace.
- creates, by chemical means, a noxious and unreasonable odor in a public place.
- abuses or threatens a person in a public place in an obviously offensive manner.
- makes unreasonable noise in a public place or in or near a private residence
- enters onto property and looks into windows for lewd purposes (peeping Tom)
- discharges a firearm in a public place
- displays a firearm in a manner calculated to cause alarm
- exposes their anus or genitals in a public place

Most disorderly conduct offenses are Class C Misdemeanors, unless they involve firearms, in which case they are Class B Misdemeanors.

Weapons

"Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following: blackjack; nightstick; mace; tomahawk.

"Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

"Illegal knife" means a: (A) knife with a blade over five and one-half inches; (B) hand instrument designed to cut or stab another by being thrown; (C) dagger, including but not limited to a dirk, stiletto, and poniard; (D) bowie knife; (E) sword; or (F) spear.

"Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that: (A) opens automatically by pressure applied to a button or other device located on the handle; or (B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

"Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

"Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

"Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

"Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

"Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

"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.

"Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

"Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

Unlawful Carrying Weapons: A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club. Class A misdemeanor. 3rd degree felony if committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages. DOES NOT APPLY TO PEACE OFFICER

Places Weapons Prohibited: A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a):

- (1) A school or educational institution, or any place where a school activity is being held, school bus
- (2) A polling place on the day of an election or while early voting is in progress;
- (3) A government court or office used the court
- (4) A racetrack;
- (5) A secured area of an airport
- (6) Within 1,000 feet of a designated TDCJ place of execution on an execution day

It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

- a member of the armed forces or national guard;
- a guard employed by a penal institution; or
- a commissioned security officer (must be in uniform and firearm in plain view)
- a licensed personal protection officer

3rd degree felony. DOES NOT APPLY TO PEACE OFFICER

Unlawful Possession of metal or body armor by Felon: A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor. 3rd degree felony

Prohibited Weapons: 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; (6) knuckles; (7) armor-piercing ammunition; (8) a chemical dispensing device; or (9) a zip gun.

Other Laws

There are a multitude of other laws dealing with persons, property, government, etc. Refer to the Texas Penal Code or appropriate Code for additional statutes.

Defenses

Defenses are legal means to avoid punishment even though the defendant committed the crime. They are the legal way of saying, "Yes, I did the crime *but...*"

Insanity

Victims sometimes see insanity as a huge legal loophole by which criminals escape the consequences of their crimes. Texas has a very narrow insanity defense that is difficult to establish. In fact, it is almost never successful.

To be legally insane, the defendant must (1) suffer a "severe mental disease or defect" that (2) resulted in his not knowing that his conduct was wrong. Repeated criminal or antisocial conduct is not evidence of insanity.

The defendant has the burden of proving insanity. He must prove it by a preponderance of the evidence. He must also file a written notice of his intent to use this defense at least ten days before trial.

Establishing that a defendant did not know that his conduct was wrong is very difficult. In most crimes, he will flee the scene, throw away the weapon, or otherwise cover up the crime. Such conduct indicates that he knew his actions were wrong.

Entrapment

Entrapment means that a law enforcement officer induced or persuaded a person to commit a crime. Merely giving someone an opportunity to commit a crime – such as offering to buy or sell drugs – is not entrapment. This defense is used in cases of undercover activity such as drug buys or vice squads.

Intoxication

Voluntary intoxication is not a legal defense in Texas. If intoxication rises to the level of temporary insanity, it may be mitigating evidence at the punishment phase. The judge or jury can use it to decide to lengthen, shorten or make no difference in a defendant's sentence.

Self-Defense

Complex laws govern self-defense. It is available to protect one's self against unlawful use of force.

Self-defense must be reasonable and immediately necessary. It can include deadly force in situations where retreat would be unreasonable to prevent the other person from using deadly force or from committing aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Self-defense can also be used to protect property. Force, but not deadly force, may be used if it is reasonably necessary to stop a trespass or other interference with property. Deadly force may be used to reasonably prevent the arson, burglary, robbery, aggravated robbery, theft during the night, or criminal mischief during the night.

Other specific self-defense provisions define where law enforcement officers can use force.

In general, self-defense is not available if the victim:

- is responding to verbal provocation
- is resisting lawful searches or arrests
- consented to the exact force used
- provoked the force
- armed himself and sought an explanation or discussion with someone he had a difference with

Special Relationships

The law also recognizes that reasonable force may be used in three special relationships when and to the degree necessary to promote discipline or welfare. These relationships are:

- parent and child
- educator and student

- guardian and incompetent

Juvenile Laws

Juvenile crime in Texas, especially violent juvenile crime, exploded in the decade from 1984 to 1993. During that time period, juvenile arrests increased by 47%. Much of that increase can be explained by the 30% population increase in the juvenile age group. For violent crime, however, juvenile arrests increased a whopping 282%. Worst of all, arrests for the two most serious violent crimes, murder and sexual assault, increased 291% and 798%, respectively.

Faced with these grim statistics, the Texas legislature met in 1995 determined to do something about juvenile crime. While their changes were more modifications of the existing system than radical reforms, they did create a system that has many more options and resources for juveniles who are heading in the wrong direction and that can isolate and severely punish more of the worst juvenile offenders. Among the changes adopted to toughen the system were three major changes:

- lowering the age for certification to stand trial as an adult from 15 to 14 for capital murder, aggravated controlled substance felonies and all other first degree felonies;
- expanding the Texas Youth Commission from a 2,000 bed system to a 6,000 bed system; and
- applying determinate sentencing to a much wider range of crimes.

The Juvenile System

The juvenile system operates separately from the adult criminal system. It deals with children who engage in certain types of improper conduct. This conduct can range from truancy to capital murder.

A “child” subject to the juvenile system must be at least 10 years of age and under 17 when the conduct occurred. Texas law doesn’t provide for any legal consequences in the juvenile system for conduct committed before the tenth birthday.

Juveniles are not technically charged with a crime. Instead, the two broad categories of juvenile misconduct are delinquent conduct and conduct indicating a need for supervision.

Delinquent conduct includes:

- all felonies
- class A and B misdemeanors (including DWI and third offense driving under the influence of alcohol by a minor)
- violation of certain juvenile, justice, or municipal court order (except for truancy, runaway, or Class C Misdemeanors)

Conduct indicating a need for supervision (CINS) includes:

class C misdemeanors

- truancy
- running away
- inhalant abuse
- certain school expulsions (serious misconduct at school)
- conduct that violates a court ordered condition of an at-risk child program

A child can be prosecuted in the adult court system for perjury, traffic offenses, and fineable only offenses.

Juvenile Procedure

Juvenile procedure combines adult criminal law protections for defendants and various procedures designed to protect the child. In most cases, even when the procedure of the two systems is similar, they use different terminology.

Custody

Juveniles are not arrested; they are “taken into custody” when a peace officer has probable cause to believe that the juvenile has engaged in delinquent conduct or CINS.

Place of Detention

Juveniles may not be taken to an adult jail, but must take him to a detention center certified under state standards. At Wise County, we can temporarily hold a juvenile until transport to a detention center, but cannot hold the juvenile in the jail area (or even walk the juvenile through the jail area).

Detention hearing

There is no “bail” hearing in a juvenile case. Juveniles may be released to a responsible adult or parents. Juveniles stay in detention only if they:

- are likely not to appear for court
- have no parent or other person able to return them to court
- have no suitable care
- are accused of a felony and may be dangerous to themselves or others
- have a previous finding of delinquency or a conviction for a felony or a Class A or B misdemeanor.

Juveniles must have a detention hearing within two days, and if held, a hearing at least every 10 days to determine if detention is still necessary.

Formal Charges

The juvenile system has an intake officer normally connected to the juvenile probation office. The probation’s juvenile officer determines if the juvenile system has jurisdiction of the child (as defined by the age) and whether probable cause exists the juvenile has committed either delinquent conduct or CINS.

After this investigation, a prosecutor may file a petition, which has formal charges much like those in a misdemeanor information. Juveniles have no right to a grand jury indictment.

The two-phase trial of a juvenile case proceeds much like that of an adult case. The determination of guilt phase is called the adjudication hearing; the punishment phase is called the disposition hearing.

Dispositions

A juvenile court may certify the juvenile to stand trial as an adult, at which time they are transferred to an adult jail. A juvenile court may also impose sentencing, at the Texas Youth Commission (and possibly subsequent transfer to an adult jail at the age of 18). Sentences are:

- up to 40 years for a capital felony, a first degree felony, or an aggravated controlled substance felony, with a minimum parole eligibility of 10 years for a capital felony and 3 years for a first degree felony

- up to 20 years for a second degree felony with a parole eligibility of a minimum of 2 years
- up to 10 years for a third degree felony with a parole eligibility of a minimum of 1 year

Juveniles may be placed under probation (in their own homes), community service hours, suspend or restrict the juvenile's driver's license, restrict the juvenile's contact or actions, or pay restitution.

Arrests (from CCP)

A peace officer may arrest a person under the following conditions:

- With a valid arrest warrant
- For an offense committed within view;
- Where circumstances would lead a reasonable person to believe a crime has been committed or is about to be committed; (this is called "probable cause")
- Where an assault has occurred and the officer feels that another assault may occur once he or she leaves or assaulted a family member;
- believes a suspect has committed a felony and is about to escape.

Culpable Mental States

- A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
- A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.
- A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- A person acts with criminal negligence, or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.