

PENAL CODE

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 39. ABUSE OF OFFICE

Sec. 39.01. DEFINITIONS. In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

- (A) imposes a duty on the public servant; or
- (B) governs the conduct of the public servant.

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

- (A) an agreement under which the public servant holds the property;
- (B) a contract of employment or oath of office of a public servant;
- (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- (D) a limited purpose for which the property is delivered or received.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 39.015. CONCURRENT JURISDICTION TO PROSECUTE OFFENSES UNDER THIS CHAPTER. With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 2, eff. June 15, 2007.

Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$100;

(2) a Class B misdemeanor if the value of the use of the thing misused is \$100 or more but less than \$750;

(3) a Class A misdemeanor if the value of the use of the thing misused is \$750 or more but less than \$2,500;

(4) a state jail felony if the value of the use of the thing misused is \$2,500 or more but less than \$30,000;

(5) a felony of the third degree if the value of the use of the thing misused is \$30,000 or more but less than \$150,000;

(6) a felony of the second degree if the value of the use of the thing misused is \$150,000 or more but less than \$300,000;
or

(7) a felony of the first degree if the value of the use of the thing misused is \$300,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

(e) If separate transactions that violate Subsection (a)(2) are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the use of the things misused in the transactions may be aggregated in determining the classification of the offense.

(f) The value of the use of a thing of value misused under Subsection (a)(2) may not exceed:

(1) the fair market value of the thing at the time of

the offense; or

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

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3241, ch. 558, Sec. 7, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.01 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 82 (S.B. 828), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 28, eff. September 1, 2015.

Sec. 39.03. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data

reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Section 42.006, Education Code, under a law requiring that reporting.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(34), eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 39.02 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 2, eff. September 1, 2013.

Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION. (a) An official of a correctional facility or juvenile facility, an employee of a correctional facility or juvenile facility, a person other than an employee who works for compensation at a correctional facility or juvenile facility, a volunteer at a correctional facility or juvenile facility, or a peace officer commits an offense if the person intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the offense is committed against:

(1) an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility; or

(2) a juvenile offender detained in or committed to a correctional facility.

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.

(e) In this section:

Text of subdivision as amended by Acts 2015, 84th Leg., R.S., Ch. 216 (H.B. 511), Sec. 1

(1) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14);

(B) any place or facility designated for the detention of a person suspected of violating a provision of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.); or

(C) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

Text of subdivision as amended by Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 2

(1) "Correctional facility" means any place described by Section 1.07(a)(14).

(2) "Custody" means the detention, arrest, or confinement of an adult offender, the detention of a juvenile offender, or the commitment of a juvenile offender to a correctional facility or juvenile facility.

(2-a) "Juvenile facility" means:

(A) a facility operated by the Texas Juvenile Justice Department or a private vendor under a contract with the Texas Juvenile Justice Department; or

(B) a facility for the detention or placement of juveniles under juvenile court jurisdiction and that is operated wholly or partly by a juvenile board or another governmental unit or by a private vendor under a contract with the juvenile board or governmental unit.

(3) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section [21.01](#).

(4) "Sexual conduct" and "performance" have the meanings assigned by Section [43.25](#).

(5) "Sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

(f) An employee of the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, a juvenile facility, a local juvenile probation department, or a community supervision and corrections department established under Chapter [76](#), Government Code, a person other than an employee who works for compensation at a juvenile facility or local juvenile probation department, or a volunteer at a juvenile facility or local juvenile probation department commits an offense if the actor engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the actor knows is under the supervision of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, probation department, or community supervision and corrections department but not in the custody of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, probation department, or community supervision and corrections department.

(g) An offense under Subsection (f) is a state jail felony.

(h) It is an affirmative defense to prosecution under Subsection (f) that the actor was the spouse of the individual at the time of the offense.

Added by Acts 1979, 66th Leg., p. 1383, ch. 618, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3242, ch. 558, Sec. 8, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 18, Sec. 5, eff. April 15, 1987. Renumbered from Penal Code Sec. 39.021 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1406, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 158, Sec. 1 to 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1070, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1297, Sec. 69, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. [103](#)), Sec. 62, eff.

June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 63, eff.

June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 3, eff.

June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 43, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 216 (H.B. 511), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 144, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 145, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 3, eff. September 1, 2017.

Sec. 39.05. FAILURE TO REPORT DEATH OF PRISONER. (a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18, Code of Criminal Procedure, and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) A person commits an offense if the person is required by Section 501.055, Government Code, to:

(1) give notice of the death of an inmate and the

person fails to give the notice; or

(2) conduct an investigation and file a report and the person:

(A) fails to conduct the investigation or file the report; or

(B) fails to include in the report facts known to the person or discovered by the person in the investigation.

(c) An offense under this section is a Class B misdemeanor. Added by Acts 1983, 68th Leg., p. 2510, ch. 441, Sec. 2, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.022 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.104, eff. Sept. 1, 1995.

Sec. 39.06. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter [552](#), Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3243, ch. 558, Sec. 9, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 30, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 43, Sec. 3, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 927, Sec. 1, eff. Aug. 28, 1989. Renumbered from Penal Code Sec. 39.03 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 14.52, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1043 (H.B. [1783](#)), Sec. 5, eff. September 1, 2015.

Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST. (a) A person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail commits an offense if the person:

(1) has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement; and

(2) knowingly fails to comply with the detainer request.

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

(c) It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

Added by Acts 2017, 85th Leg., R.S., Ch. 4 (S.B. 4), Sec. 5.02, eff.
September 1, 2017.