

## **CHAPTER 1: THE NATURE, PURPOSE AND FUNCTION OF CRIMINAL LAW**

### **BRIEF HISTORY**

Texas was originally part of Spain's colonial Empire. After Mexican Independence in 1821, Texas became part of Mexico. A rapid influx of settlers from the United States set the stage for conflict. After a violent revolution in 1836, Texas became an independent nation. In 1845, upon approval of both the Texas and U.S. governments, Texas was annexed into the United States. The Mexican War followed shortly thereafter. American victory here set the stage for an even more costly war less than two decades later.

In 1861 Texas seceded from the Union and joined the Confederacy in the Civil War. Following Reconstruction Texas was readmitted to the Union in 1870. Much of early Texas history involved violent conflict with Native American tribes (*e.g.*, Apache, Comanche) and later, difficult race relationships (lynching, segregated public schools and facilities)

Today, Texas ranks second in the nation in both population and land area. Texas' population is over 20 million and is second only to that of California. Unlike some states, Texas' population has been increasing steadily.

In many respects Texas is conservative, and shares much in common with the other states of the old Confederacy. The prevailing attitude is one of being tough on crime. In recent years, conservative Republicans have dominated government on the state level.

Some of the unique influences on Texas have been a large and growing Mexican-American population, dominance of the oil industry, the Mexican border, and Texas' revolutionary, wild west, and sometimes violent, history. Texas is a large and varied state with both large cities and very sparsely populated rural areas.

Texas has relatively high crime and imprisonment rates. Texas executes more prisoners each year than any other state. Texas is second in the number of prison inmates (around 172,000). The federal system is first with almost 185,000. Texas ranks second in the number of jail inmates with around 67,000. California is number one with around 82,000. Texas has the third highest incarceration rate in the nation (976/1000) below only Louisiana and Georgia. For more on crime in Texas see <http://www.txdps.state.tx.us/crimereports/04/2004index.htm#cit2004>

### **TEXAS COURT SYSTEM**

Texas does not have a uniform or completely unified court structure. The jurisdiction of trial courts can vary from county to county and there are 254 counties. To assist you in understanding this structure, at this point you should go to and print out a chart on the Texas court system. This will enhance your understanding of the material below. [http://www.courts.state.tx.us/oca/PublicInfo/AR2005/jud\\_branch/1\\_Court\\_Structure\\_Chart\\_Sept\\_2005.pdf](http://www.courts.state.tx.us/oca/PublicInfo/AR2005/jud_branch/1_Court_Structure_Chart_Sept_2005.pdf)

## The Nature, Purpose and Function of Criminal Law

Texas is unique in that it is only one of two states that has two state courts of last resort. The Texas Court of Criminal Appeals (CCA) has the final say on state law issues in criminal cases. The Texas Supreme Court has the final word on state law issues in civil and juvenile delinquency cases. Each of these courts has nine justices, hear their cases *en banc* (all justice hear all cases, panels of 3 are not used), and have mostly discretionary, rather than mandatory jurisdiction.

Below these courts of last resort are Texas' intermediate appellate courts, the Courts of Appeals. The state is divided into 14 geographical regions, each covered by one Court of Appeals. These courts hear appeals in both civil and criminal cases.

The trial court of general jurisdiction is the District Court. There are approximately 430 of these. Each has one judge and they try felony cases and civil cases where relatively large amounts of money are at stake. Most District Courts cover only 1 county, but some cover more than county. Populous counties are served by multiple District Courts.

The jurisdiction of Texas District Courts, and the County courts below them, is not the same for all counties. In general, County-level courts try class A and B misdemeanors, while Justice of the Peace and Municipal Courts try class C (fine only) cases. Municipal Courts also hear ordinance violation cases.

Attorneys for indigent defendants in criminal cases are provided either by Public Defender offices (typically in the more populous areas) or by assigned counsel in less populous areas. Some areas use a combination of these two mechanisms.

Each county has a county attorney who prosecutes misdemeanors, and a District Attorney who prosecutes felonies. In less populous areas a District Attorney may cover more than one county. City attorneys prosecute violations of city ordinances.

Except for some Municipal Court judges, all judges in Texas are elected by partisan election. Although there have been numerous scandals and calls for changes in the process of judicial selection, the legislature does not seem inclined to want to change the status quo.

### **APPEALS IN CRIMINAL CASES**

From trial in District Court, death penalty cases go directly to the CCA, bypassing the Courts of Appeals. Persons convicted in other cases have the option of one mandatory appeal to the Courts of Appeals. (If these people appeal, the appropriate Court of Appeals must hear their appeal.) Appeals to the CCA are discretionary on the part of the CCA.

Misdemeanor convictions in county-level courts are appealed to the appropriate Court of Appeals. These appeals must be heard. Appeals to the CCA are discretionary on the part of the CCA. For a complete description of trial and appellate jurisdiction of Texas Courts see

[http://www.courts.state.tx.us/oca/PublicInfo/AR2005/jud\\_branch/2a\\_Subject\\_Matter\\_Jurisdiction\\_of\\_Courts\\_FY\\_2005\\_0905.pdf](http://www.courts.state.tx.us/oca/PublicInfo/AR2005/jud_branch/2a_Subject_Matter_Jurisdiction_of_Courts_FY_2005_0905.pdf)

## TEXAS COURT OF CRIMINAL APPEALS

The CCA has nine Judges, one Presiding Judge and 8 Judges. Like the Texas Supreme Court, they sit only in the state capital (Austin) and decide cases *en banc*. The Judges serve 6-year overlapping terms. In general, like most Texas courts, the CCA is conservative, generally reaching decisions favoring the state. The terms “liberal” or “judicial activist” does not generally apply to the CCA.

For a variety of reasons, there is relatively high turnover on the CCA. Biographies of the current Judges can be found at (click on each Judge’s name for a brief biography):

<http://www.cca.courts.state.tx.us/about/justices.asp>

## OVERVIEW OF CRIMINAL LAW IN TEXAS

Most of Texas’ substantive criminal law can be found in the Texas Penal Code (TPC). This code can be found at

<http://www.capitol.state.tx.us/statutes/pe.toc.htm>

The official version of Texas statutes is “Vernon’s Texas Codes Annotated.” This multi-volume set of books contains both codified statutes and non-codified statutes. The official version of the TPC is found in 3 volumes entitled “Vernon’s Texas Codes Annotated, Penal Code.” The citation form for this is “V.T.C.A. Penal Code sec. \_\_\_\_\_. When consulting any law book, be sure check for changes or new material. This material may be in a separately bound supplement or in the back of the volume in a paperback format termed the “pocket part.”

Texas’ drug laws are not in the Penal Code. They are in the Health and Safety Code and can be found in the Texas Controlled Substances Act which is ch. 481 of the Texas Health and Safety Code. This Code can be found at

<http://www.capitol.state.tx.us/statutes/hs.toc.htm>

Offense related to alcoholic beverages, operations of bars, etc. are found in the Alcoholic Beverage Code which can be found at

<http://www.capitol.state.tx.us/statutes/al.toc.htm>

Other criminal statutes are scattered throughout various Texas codes such as the Education, Family, Parks and Wildlife, Occupations, Human Resources and Elections Codes. In fact, there are few if any of the codes in Texas statutes that don’t contain at least one criminal offense. Beckham (2006) estimated there were about 1,900 crimes outside the TPC. Her article lists some of the more unusual crimes in Texas.

## THE TEXAS PENAL CODE

The current TPC was originally enacted in 1973 and became effective in 1974. Like the crimes or penal codes of most states, much of the TPC is based on the American Law Institute’s Model Penal Code. Many of the similarities between the law of Texas and other states are due to the fact that most states at some point borrowed heavily from the Model Penal Code. The Model Penal Code and its influence are discussed in your text in ch. 1 in the “Model Penal Code” section. For a good introduction to the Model Penal Code see Robinson and Dubber’s article at

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<http://www.law.upenn.edu/fac/phrobins/intromodpencode.pdf>

The Texas legislature meets only every two years (odd-numbered years) and makes numerous changes each session. The latest Legislature the 79<sup>th</sup> (2005) created approximately 50 new crimes. Most of these were in codes other than the Penal Code. Among the notable additions were a new type of capital murder, laws to help deal with the state's methamphetamine problem, and continuing efforts to deal with computer and internet crime (*e.g.*, TPC sec. 33.021, Online solicitation of a minor)

In 2000, a group of Law Professors at Northwestern University undertook an evaluation of the criminal laws of the 50 states, the federal government and the District of Columbia. Among other things they looked for were clarity, definitions of key terms, consistency, and organization. They were not evaluating the wisdom or policy choices reflected in the codes. Many criminal codes were poorly written, badly organized, internally inconsistent, and have haphazard or arbitrary punishment schemes. Overall, Texas came out as having the nation's best Penal Code. For more on this study see <http://www.law.upenn.edu/fac/phrobins/code.html>

As in many penal codes, TPC offenses are organized into Titles. The name of each Title reflects the societal value the offenses in that Title are designed to protect.

Title 5 deals with "Offenses Against the Person". Examples are criminal homicides and assaults, sexual assaults and sex crimes such as indecent exposure.

Title 6 deals with "Offenses Against the Family," such as bigamy and criminal non support.

Title 7 covers "Offenses Against Property" such as arson, burglary, robbery, theft, fraud and computer crime.

Title 8 is titled "Offenses Against Public Administration." These offenses include bribery and perjury.

Title 9 deals with "Offense Against Public Order and Decency," and includes offenses such as disorderly conduct, prostitution, and obscenity.

Title 10 covers "Offenses Against Public Health, Safety and Morals." Included are weapons, gambling and intoxication offenses, including driving while intoxicated.

Finally, Title 11 deals with "Organized Crime." This is one of the shortest Titles in the TPC.

Within each title are chapters, subchapters and sections. The first two numbers in each sec. number are the numbers of the chapter in which it is found. For instance, sec. 25.01 is in ch. 25. The second number in the sec. designation indicates the order it is found in the chapter. For instance, sec. 25.03 is the third section in ch. 25. In some chapters the order is not this neat. For instance, Sec. 25.031 is the fourth section in ch. 25. It is the first section after sec. 25.03. For an overview of the organization of the TPC see

<http://www.capitol.state.tx.us/statutes/pe.toc.htm>

## TEXAS COURT OPINIONS

The official source of Texas court opinions is the *Southwestern Reporter*, (abbreviated “S.W.”) It is now in its third series (note the “2d or 3d” after the “SW.”). This reporter also contains cases from Missouri, Arkansas, Kentucky, and Tennessee. A special version of the *Southwestern Reporter* that contains only Texas cases is also available. The formal citation form for a case from Texas in the Southwestern Reporter will indicate the state and court from which the case issued. For instance, consider this citation: *Black v. State*, 26 S.W.3d 895 (Tex.Crim.App. 2000). The “Tex” indicates the opinion is from a Texas court and “Tex.Crim.App.” or “Tex.Cr.App.” indicates the Texas CCA. “2000” is the date the opinion was released. The “26” is the volume in which the case will be found. The “895” is the page in that volume where the case starts.

The citation will also indicate which of Texas’ Courts of Appeals issued the opinion. An example is *Trello v. State*, 138 S.W.3d 487 (Tex.App-Houston [14<sup>th</sup> Dist.] 2004). For more information on reporters and how to read citations see the “Locating Cases” section in ch. 1 of your text.

Opinions of the Texas Supreme Court and CCA can be located in Findlaw at <http://www.findlaw.com/11stategov/tx/txca.html>

CCA opinions can be found at the CCA website <http://www.cca.courts.state.tx.us/>

Links to Texas Courts of Appeals decisions, municipal ordinances and other Texas legal materials can be found at <http://www.findlaw.com/11stategov/tx/laws.html>

Texas state cases sometimes find their way into the federal court system and to the U.S. Court of Appeals for the Fifth Circuit (which also includes Louisiana and Mississippi). These cases can be found in the *Federal Reporter*, or at Findlaw at <http://www.findlaw.com/casecode/courts/5th.html>

Opinions from the official Fifth Circuit site are at <http://www.ca5.uscourts.gov/Opinions.aspx>

A few Texas cases eventually get to the U.S. Supreme Court. Two sources of such opinions are <http://www.findlaw.com/casecode/supreme.html>

and the official U.S. Supreme Court website at <http://www.supremecourtus.gov/opinions/opinions.html>

## CRIMINAL PROCEDURE IN TEXAS

The law of criminal procedure is a very complex topic involving the interaction of statutes, court rules and constitutional provisions. Most of the statutory law in Texas on criminal procedure is found in the Texas Code of Criminal Procedure. This is available at <http://www.capitol.state.tx.us/statutes/cr.toc.htm>

### EXERCISE

As an introduction to various ways of finding Texas and U.S. Supreme Court opinions, do the following exercise. Using whatever Internet research tools you desire, find the following opinions dealing with a famous Texas case. Be sure to determine how the case got to each of these courts, and what each court ruled about Johnson's conviction and/or the statute involved.

1. *Johnson v. State*, 706 S.W.2d 120 (1986)
2. *Johnson v. State*, Texas Court of Criminal Appeals, Apr. 20, 1988, Docket # 372-86
3. *Texas v. Johnson*, (full U.S. Supreme Court opinion, 1989)

### REVIEW QUESTIONS

Multiple Choice (Answers are found at the end of this chapter)

1. The court of last resort for state law issues in Texas in criminal cases is the Texas
  - a. Supreme Court
  - b. Court of Criminal Appeals.
  - c. Supreme Criminal Court
  - d. Court of Appeals
  - e. Criminal Court of Last Resort.
2. In Texas, felony cases are tried in
  - a. County Courts.
  - b. Justice of the Peace Courts.
  - c. Courts of Common Pleas.
  - d. District Courts.
  - e. Probate Courts.
3. The current Penal Code in became effective in
  - a. 1896
  - b. 1925
  - c. 1974

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- d. 1980
  - e. 1994
4. Texas court opinions are published in the \_\_\_\_\_ Reporter.
- a. Texas and New Mexico
  - b. Southwestern
  - c. Western
  - d. Frontier
  - e. Mid-western
5. In a published evaluation of state crimes and penal codes, overall the Texas' Penal Code was rated
- a. first.
  - b. fifth.
  - c. twenty-fifth.
  - d. forty-fifth.
6. Like many penal codes, Texas' code was heavily influenced by the American Law Institute's
- a. Model Penal Code.
  - b. Model Code of Criminal Statutes.
  - c. Suggested Crimes Code.
  - d. Format for Penal Codes.
  - e. Uniform State Penal Code.

### REFERENCES AND RESOURCES

Beckham, D.B. (2006). Thrashing Pecans and Other Non-PC Crimes. *Texas Bar Journal*, vol. 69, Mar. 2006, pp. 262-65.

Belbow, B. A. (1999). *A Guide to Criminal Law for Texas*. Belmont, CA: West/Wadsworth, ch. 8

Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender, v

Texas Jurisprudence 3<sup>rd</sup> (2006). *Criminal Law*, sec. 3.

Kraemer, .R. H., Chardlean, N. & Pringle, D.F. (2004). *Essentials of Texas Politics*. Belmont, CA: Thomson-Wadsworth

Horton, D.M., Turner, R.K. (1999). *Lone Star Justice*. Austin: Eakin Press

The Handbook of Texas Online

<http://www.tsha.utexas.edu/handbook/online/articles/TT/ft1.html>

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Texas Almanac, 2006-2007

<http://www.texasalmanac.com/facts/>

Texas Penal Code

<http://www.capitol.state.tx.us/statutes/pe.toc.htm>

Texas Legislature Online

<http://www.capitol.state.tx.us/>

Prison and Jail Inmates at Midyear 2005

<http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim05.pdf>

Texas Judiciary Online

<http://www.courts.state.tx.us/>

**ANSWER KEY, CH. 1, THE NATURE, PURPOSE AND FUNCTION OF CRIMINAL  
LAW**

1. b
2. d
3. c
4. b
5. a
6. a