

CHAPTER 16: CRIMES AGAINST THE STATE

INTRODUCTION

Because national defense, international relations, etc. are primarily the responsibility of the federal government, no state, including Texas, has the lengthy, detailed and complex statutes on terrorism, sabotage, etc. that are found in the federal statutes. In addition to a dearth of Texas statutes on these topics, there is a dearth of case law on the few relevant statutes.

TREASON

The wording is not identical, but the Texas Constitutional provision on treason is very similar to Art III., Sec. 3 clause 1 of the U.S. Constitution. Art. I sec. 22 of the Texas Constitution provides:

Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

SEDITION AND SABOTAGE

Texas Government Code ch. 557, subch.. A contains three relevant offenses:

Sec. 557.001. SEDITION. (a) A person commits an offense if the person knowingly:

- (1) commits, attempts to commit, or conspires with one or more persons to commit an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence;
- (2) under circumstances that constitute a clear and present danger to the security of this state or a political subdivision of this state, advocates, advises, or teaches or conspires with one or more persons to advocate, advise, or teach a person to commit or attempt to commit an act described in Subdivision (1); or
- (3) participates, with knowledge of the nature of the organization, in the management of an organization that engages in or attempts to engage in an act intended to overthrow, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence.

(b) An offense under this section is a felony punishable by:

- (1) a fine not to exceed \$20,000;

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- (2) confinement in the institutional division of the Texas Department of Criminal Justice for a term of not less than one year or more than 20 years; or
- (3) both fine and imprisonment.

Sec. 557.011. SABOTAGE. (a) A person commits an offense if the person, with the intent to injure the United States, this state, or any facility or property used for national defense sabotages or attempts to sabotage any property or facility used or to be used for national defense.

(b) An offense under this section is a felony punishable by confinement in the institutional division of the Texas Department of Criminal Justice for a term of not less than two years or more than 20 years.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the actor may be prosecuted under both sections.

(d) In this section, "sabotage" means to willfully and maliciously damage or destroy property.

Sec. 557.012. CAPITAL SABOTAGE. (a) A person commits an offense if the person commits an offense under Section 557.011 (a) [Sabotage] and the sabotage or attempted sabotage causes the death of an individual.

- (b) An offense under this section is punishable by:
- (1) death; or
 - (2) confinement in the institutional division of the Texas Department of Criminal Justice for:
 - (A) life; or
 - (B) a term of not less than two years.

(c) If conduct constituting an offense under this section also constitutes an offense under other law, the actor may be prosecuted under both sections.

OFFENSES AGAINST PUBLIC ADMINISTRATION

Title 8 of the TPC covers "Offenses Against Public Administration." It contains three chapters. Ch. 36, Bribery and Corrupt Influence was covered in part in ch. 15. Ch. 37 deals with "Perjury and Other Falsification." Ch. 38 deals with "Abuse of Office." Parts of this ch. were also dealt with in ch. 15.

A few of the more significant sections from TPC ch. 38 are covered below:

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.

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(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.

Note the difference between a person who has been arrested and one who has been stopped (Terry stop) or is a material witness. Only the person who has been arrested commits a crime by refusing to provide the information. Subsec. (b) deals with giving false information. An even broader statute from Nevada has been upheld by the U.S. Supreme Court in spite of challenges under the Fourth Amendment and privilege against self incrimination. *Hiibel v. Sixth Judicial District Court*, 124 S.Ct. 2452 (2004)

Among the relevant offenses in ch. 38 are the following:

Sec. 38.03. Resisting arrest, search, or transportation

Sec. 38.04. Evading arrest or detention

Sec. 38.05. Hindering apprehension or prosecution

Sec. 38.06. Escape

Sec. 38.07. Permitting or facilitating escape

Under sec. 38.08 it is not a defense to 38.06 or 38.07 that the custody was unlawful

Sec. 38.09. Implements for escape

Sec. 38.10. Bail jumping and failure to appear

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

Sec. 38.111. Improper contact with victim

Sec. 38.112. Violation of protective order issued on basis of sexual assault

Sec. 38.113. Unauthorized absence from community corrections facility, county correctional center, or assignment site

Sec. 38.114. Contraband in correctional facility

Sec. 38.13. Hindering proceedings by disorderly conduct

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Sec. 38.14. Taking or attempting to take weapon from peace officer, parole officer, or community Supervision and corrections department officer

Sec. 38.15. Interference with public duties

Sec. 38.151 Interference with police service animals

Sec. 38.16. Preventing execution of civil process

Sec. 38.17. Failure to stop or report aggravated sexual assault of child

Sec. 38.171. Failure to report felony

Sections 38.17 and 38.171 are reproduced in ch. 4 *infra*. Sec. 38.171 is similar to the federal crime “misprision of a felony.”

Finally is TPC sec. 22.07:

§ 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

- (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (2) place any person in fear of imminent serious bodily injury;
- (3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place;
- (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
- (5) place the public or a substantial group of the public in fear of serious bodily injury; or
- (6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

Depending upon the circumstances, the offense ranges from a class B misdemeanor to a third degree felony.

REVIEW QUESTIONS

1. Both the Texas and U.S. Constitutions define the crime of

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- a. libel.
 - b. slander.
 - c. sedition.
 - d. sabotage.
 - e. treason.
2. It is a crime in Texas to refuse to give a police officer your name and address and date of birth if
- a. you have been arrested.
 - b. you have been arrested or stopped.
 - c. you have been arrested, stopped or are a material witness.
 - d. you have been arrested, stopped, are a material witness or an illegal alien.
 - e. you are an illegal alien or registered sex offender.
3. Attempting to overthrow the government by force or violence is the offense of
- a. treason.
 - b. sabotage.
 - c. sedition.
 - d. terrorism.
 - e. terroristic threat.
4. The only capital offense outside ch. 19 of the TPC is
- a. 1st degree treason.
 - b. aggravated sedition.
 - c. capital treason.
 - d. capital sabotage.
 - e. aggravated sabotage.
5. In Texas threatening to commit a crime in an attempt to influence government decisions is the crime of
- a. terroristic threat.
 - b. extortion of a public official.
 - c. terrorism.
 - d. harassment.
 - e. sedition.
6. Under Texas law, it is a crime to fail to stop or report the offense of
- a. aggravated sexual assault of a child.
 - b. treason.
 - c. sabotage.
 - d. sedition.
 - e. resisting arrest.

REFERENCES AND RESOURCES

Belbow, B. A. (2005). *Guide to Criminal Law for Texas*,. 3rd ed. Belmont, CA: Thomson-Wadsworth, ch 13.

Texas Jurisprudence 3rd (2006). *Criminal Law* ,sec. 1107-1289.

ANSWER KEY - CH. 16: CRIMES AGAINST THE STATE

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