

CHAPTER 14: WHITE-COLLAR CRIME

INTRODUCTION

White collar crime is crime committed by persons of high status during the course of their occupation. As compared to high public officials and corporate executives (white-collar employees), the average worker (blue collar) does not have the opportunity or temptation to commit these crimes.

Texas, like most states, does not have the comprehensive and detailed statutes dealing with white-collar, securities, and environmental crime that are found in federal law. Many forms of fraud (covered in ch. 13 *infra* and in your text) are committed by white collar-criminals. Because of superior resources at the federal level, most significant violations of such laws are prosecuted under federal law, rather than state law.

Insurance fraud and Medicaid Fraud are covered in TPC ch 35 and ch. 35A respectively
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000035.00.doc>
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000035a.00.doc>

Many of the environmental laws are in the Natural Resources Code.
<http://www.capitol.state.tx.us/statutes/nr.toc.htm>

This chapter thus will deal only with three topics: Money Laundering (TPC ch. 34)
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.007.00.000034.00.doc>

Abuse of Office (TPC ch. 39),
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.008.00.000039.00.doc>

and Bribery (TPC ch. 36),
<http://www.capitol.state.tx.us/statutes/docs/PE/content/word/pe.008.00.000036.00.doc>

MONEY LAUNDERING

Money laundering involves attempting to disguise the fact that money has been obtained through illegal activity such as drug sales. Numerous strategies have been devised to make it appear that illegally obtained funds have been obtained legally. Most of the cases are prosecuted under federal law, but Texas and many states have their own statutes. These statutes cover more than just the laundering itself.

Sec. 34.02. MONEY LAUNDERING. (a) A person commits an offense if the person knowingly:

- (1) acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity;
- (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity;

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- (3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or
- (4) finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity.

Under subsec.(a-1), the state does not have to prove the defendant was aware of the specific type of criminal activity from which the proceeds were derived. Further, criminal activity includes acts that are crimes under Texas, federal or any state law.

PUBLIC CORRUPTION, ABUSE OF OFFICE AND BRIBERY

Title 8, of the TPC (Offenses Against Public Administration) contains most of the offenses in this category. TPC ch. 36 deals with “Bribery and Corrupt Influence.” Ch. 37 is titled “Perjury and Other Falsification.” Obstructing Governmental Operations is TPC ch. 38. Ch. 39 is “Abuse of Office.” Only a few of these TPC statutes are discussed below:

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.

Depending upon the amount of money involved or other circumstances, the offense can range from a Class C Misdemeanor to a Felony of the First Degree.

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 [defined below]/.

Among other things, this statute provides criminal penalties for violations of Civil Rights and Liberties. “Sexual harassment,” (sec. 39.03 c), in this section

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.

In proposing the sexual harassment portion of this statute, the sponsor and supporters cited an incident in which a municipal judge allegedly offered to dismiss a woman’s traffic tickets in return for sexual favors

This is referred to as “quid pro quo” (this for that) sexual harassment and can also become the basis of a civil action under either state or federal law. All versions of this offense are Class A Misdemeanors..

For an excellent discussion of the sexual harassment part of this statute and a rejection of vagueness and overbreadth challenges see *Sanchez v. State*, 999S.W.2d 677 (Tex.Crim.App. 1999):

<http://www.bakers-legal-pages.com/cca/opinions/125998a.htm>

Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY. (a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional 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.

This statute provides criminal penalties for those who violate the statutory and civil rights of prisoners, detainees, etc. The sexual activity is criminal even if voluntary. The person in custody is not criminally liable. This is a Class A Misdemeanor or State Jail Felony.

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

- (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 principal of a school, 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.

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Given the increasing amount of information collected by government, most if not all states, have statutes like this dealing with public servants abusing confidential information.

§ 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
- (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
- (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
- (4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

Note that both the person offering the bribe and the person accepting the bribe are guilty of a crime. Further, the crime does not require that the bribe be accepted.

REVIEW QUESTIONS

Multiple Choice (Answers are found on the last page of this chapter)

1. Under Texas law, one form of the offense of _____ involves sexual harassment.
 - a. official oppression.
 - b. abuse of office
 - c. bribery
 - d. corrupt influence.
 - e. retaliation
2. The offense of _____ involves attempting to hide the illegal origins of income.
 - a. fraud
 - b. forgery
 - c. official oppression
 - d. misuse of official information
 - e. money laundering

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3. Violations of a person's civil rights or liberties would fall under the criminal offense of
 - a. abuse of position.
 - b. corrupt influence.
 - c. misuse of position
 - d. official oppression.
 - e. official abuse

4. The type of sexual harassment criminalized in Texas Penal Code ch. 39 is called _____ harassment.
 - a. hostile environment
 - b. *quid pro quo*
 - c. compensatory
 - d. compulsory
 - e. mandatory

5. Two types of fraud that have their own separate, specifically titled, chapters are _____ fraud
 - a. Insurance and Medicaid
 - b. Automobile and Transportation
 - c. Public and Private
 - d. Environmental and Medical
 - e. Government and Legislative

6. White-collar crime is crime committed by persons of high status
 - a. under coercion by government officials.
 - b. related to their occupation.
 - c. because of vague and unclear government regulations.
 - d. to protect their friends and relatives.
 - e. to benefit the government.

REFERENCES AND RESOURCES

- Belbow, B. A. (2005). *Guide to Criminal Law for Texas*,. 3rd ed. Belmont, CA: Thomson-Wadsworth, ch 11.
- Teague, M.O. & Helft, B. P. (2006). *Texas Criminal Practice Guide*. San Francisco: Matthew Bender. ch. 131, 133.

ANSWER KEY - CH. 14: WHITE-COLLAR CRIME

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