

PENAL CODE
TITLE 11. ORGANIZED CRIME
CHAPTER 71. ORGANIZED CRIME

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;
(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02.

(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1989, 71st Leg., ch. 782, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 23, eff. Sept. 1, 1995.

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34 or 35;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A; or

(13) any offense under Section 37.10.

Text of subsection (b) as amended by Acts 1993, 73rd Leg., ch. 761, Sec. 3

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (10) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

Text of subsection (b) as amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01

(b) Except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

Text of subsection (c) as amended by Acts 1993, 73rd Leg., ch. 761, Sec. 3

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (10) of Subsection (a) of this section that the person conspired to commit.

Text of subsection (c) as amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed, unless the defendant is convicted of conspiring to commit the offense, in which event the offense is one category lower than the most serious offense that the defendant conspired to commit.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2373, ch. 587, Sec. 1 to 3, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 782, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 761, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 24, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 189, Sec. 9, eff. May 21, 1997; Acts 1999, 76th Leg., ch. 685, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 641, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162, Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1163, Sec. 2, eff. September 1, 2007.

Sec. 71.021. VIOLATION OF COURT ORDER ENJOINING ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if the person knowingly violates a temporary or permanent order issued under Section 125.065(a) or (b), Civil Practice and Remedies Code.

(b) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(c) An offense under this section is a Class A misdemeanor. Added by Acts 1995, 74th Leg., ch. 584, Sec. 1, eff. Sept. 1, 1995.

Sec. 71.022. SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG. (a) A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

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

(c) A second or subsequent offense under this section is a felony of the second degree.

Added by Acts 1999, 76th Leg., ch. 1555, Sec. 1, eff. Sept. 1, 1999.

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02;

or

(4) once the initial combination of three or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.
Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 71.04. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 71.05. RENUNCIATION DEFENSE.

Text of subsection (a) as amended by Acts 1993, 73rd Leg., ch. 761, Sec. 3

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

Text of subsection (a) as amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01

(a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subsection (a) of Section 71.02 and took further affirmative action that prevented the commission of the offense.

(b) For the purposes of this section and Subsection (d) of Section 71.02, renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

Text of subsection (c) as amended by Acts 1993, 73rd Leg., ch. 761, Sec. 3

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) or Subdivision (10) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2374, ch. 587, Sec. 4, 5, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 761, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.