TX Electronic Crime Statutes

(http://www.capitol.state.tx.us/statutes/statutes.html)

Art. 13.25. Computer Crimes

(a) In this section "access," "computer," "computer network," "computer program," "computer system," and "owner" have the meanings assigned to those terms by Section 33.01, Penal Code.

(b) An offense under Chapter 33, Penal Code, may be prosecuted in:

(1) the county of the principal place of business of the owner or lessee of a computer, computer network, or computer system involved in the offense;

(2) any county in which a defendant had control or possession of:

(A) any proceeds of the offense; or

(B) any books, records, documents, property, negotiable instruments, computer programs, or other material used in furtherance of the offense; or

(3) any county from which, to which, or through which access to a computer, computer network, computer program, or computer system was made in violation of Chapter 33, whether by wires, electromagnetic waves, microwaves, or any other means of communication.

Added by Acts 1989, 71st Leg., ch. 306, Sec. 4, eff. Sept. 1, 1989. Renumbered from art. 13.24 by Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(1), eff. Aug. 26, 1991. Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 900, Sec. 3.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 306, Sec. 4, eff. Sept. 1, 1997.

Art. 13.26. Telecommunications Crimes

An offense under Chapter 33A, Penal Code, may be prosecuted in the county in which the telecommunications service originated or terminated or in the county to which the bill for the telecommunications service was or would have been delivered.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 5, eff. Sept. 1, 1997.

PENAL CODE

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer network, computer program, or computer system.

(2) "Aggregate amount" means the amount of:

(A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen or rendered unrecoverable by the offense; or

(B) any expenditure required by the victim to verify that a computer, computer network, computer program, or computer system was not altered, acquired, damaged, deleted, or disrupted by the offense.

(3) "Communications common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(5) "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line, or other communication medium with the capability to transmit information among the computers.

(6) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(7) "Computer services" means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(8) "Computer system" means any combination of a computer or computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(9) "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(10) "Computer virus" means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

(11) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, laser storage media, and punchcards, or may be stored internally in the memory of the computer.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception, as defined by Section 31.01, or induced by coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;

(D) given solely to detect the commission of an offense; or

(E) used for a purpose other than that for which the consent was given.

(13) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(14) "Harm" includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

(15) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor;

(B) has the right to restrict access to the property; or

(C) is the licensee of data or computer software.

(16) "Property" means:

(A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data; or

(B) the use of a computer, computer system, computer network, computer software, or data.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 306, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 306, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.44, eff. Sept. 1, 1999.

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b) An offense under this section is a Class B misdemeanor unless in committing the offense the actor knowingly obtains a benefit, defrauds or harms another, or alters, damages, or deletes property, in which event the offense is:

(1) a Class A misdemeanor if the aggregate amount involved is less than $1,500;

(2) a state jail felony if:

(A) the aggregate amount involved is $1,500 or more but less than $20,000; or

(B) the aggregate amount involved is less than $1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(3) a felony of the third degree if the aggregate amount involved is $20,000 or more but less than $100,000;

(4) a felony of the second degree if the aggregate amount involved is $100,000 or more but less than $200,000; or

(5) a felony of the first degree if the aggregate amount involved is $200,000 or more.

(c) When benefits are obtained, a victim is defrauded or harmed, or property is altered, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, damage, or deletion of property may be aggregated in determining the grade of the offense.

(d) A person who his subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 306, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 306, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1411, Sec. 1, eff. Sept. 1, 2001.

Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Renumbered from V.T.C.A., Penal Code Sec. 33.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 33.04. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Renumbered from V.T.C.A., Penal Code Sec. 33.05 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

PENAL CODE

CHAPTER 33A. TELECOMMUNICATIONS CRIMES

Sec. 33A.01. DEFINITIONS. In this chapter:

(1) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, not issued to a legitimate telecommunications access device subscriber account, or otherwise unlawful or invalid.

(2) "Counterfeit telecommunications device" means a telecommunications device that has been altered or programmed alone or with another telecommunications device to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider and includes a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(3) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, or a counterfeit telecommunications device or any telecommunications plans, instructions, or materials, to another person.

(4) "Publish" means to communicate information or make information available to another person orally, in writing, or by means of telecommunications and includes communicating information on a computer bulletin board or similar system.

(5) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence over a communications system by any method, including an electronic, magnetic, optical, digital, or analog method.

(6) "Telecommunications access device" means an instrument, device, card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(7) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications and includes a computer, computer chip or circuit, telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(8) "Telecommunications service" means the provision, facilitation, or generation of telecommunications through the use of a telecommunications device or telecommunications access device over a telecommunications system.

(9) "Value of the telecommunications service obtained or attempted to be obtained" includes the value of:

(A) a lawful charge for telecommunications service avoided or attempted to be avoided;

(B) money, property, or telecommunications service lost, stolen, or rendered unrecoverable by an offense; and

(C) an expenditure incurred by a victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, or disrupted as a result of an offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.02. UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICE. (a) A person commits an offense if the person is an officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider and the person knowingly and without authority uses or diverts telecommunications service for the person's own benefit or to the benefit of another.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service used or diverted is less than $500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service used or diverted is $500 or more but less than $1,500; or

(B) the value of the telecommunications service used or diverted is less than $500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service used or diverted is $1,500 or more but less than $20,000; or

(B) the value of the telecommunications service used or diverted is less than $1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service used or diverted is $20,000 or more but less than $100,000;

(5) a felony of the second degree if the value of the telecommunications service used or diverted is $100,000 or more but less than $200,000; or

(6) a felony of the first degree if the value of the telecommunications service used or diverted is $200,000 or more.

(c) When telecommunications service is used or diverted in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service used or diverted may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.03. MANUFACTURE, POSSESSION, OR DELIVERY OF UNLAWFUL TELECOMMUNICATIONS DEVICE. (a) A person commits an offense if the person manufactures, possesses, delivers, offers to deliver, or advertises:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to:

(A) commit an offense under Section 33A.04; or

(B) conceal the existence or place of origin or destination of a telecommunications service.

(b) A person commits an offense if the person delivers, offers to deliver, or advertises plans, instructions, or materials for manufacture of:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to commit an offense under Subsection (a).

(c) An offense under this section is a felony of the third degree.

(d) It is a defense to prosecution under this section that the person was an officer, agent, or employee of a telecommunications service provider who engaged in the conduct for the purpose of gathering information for a law enforcement investigation related to an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.04. THEFT OF TELECOMMUNICATIONS SERVICE. (a) A person commits an offense if the person knowingly obtains or attempts to obtain telecommunications service to avoid or cause another person to avoid a lawful charge for that service by using:

(1) a telecommunications access device without the authority or consent of the subscriber or lawful holder of the device or pursuant to an agreement for an

exchange of value with the subscriber or lawful holder of the device to allow another person to use the device;

(2) a counterfeit telecommunications access device;

(3) a telecommunications device or counterfeit telecommunications device; or

(4) a fraudulent or deceptive scheme, pretense, method, or conspiracy, or other device or means, including a false, altered, or stolen identification.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service obtained or attempted to be obtained is less than $500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service obtained or attempted to be obtained is $500 or more but less than $1,500; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than $500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service obtained or attempted to be obtained is $1,500 or more but less than $20,000; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than $1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service obtained or attempted to be obtained is $20,000 or more but less than $100,000;

(5) a felony of the second degree if the value of the telecommunications service obtained or attempted to be obtained is $100,000 or more but less than $200,000; or

(6) a felony of the first degree if the value of the telecommunications service obtained or attempted to be obtained is $200,000 or more.

(c) When telecommunications service is obtained or attempted to be obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service obtained or attempted to be obtained may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.05. PUBLICATION OF TELECOMMUNICATIONS ACCESS DEVICE. (a) A person commits an offense if the person with criminal negligence publishes a telecommunications access device or counterfeit telecommunications access device that is designed to be used to commit an offense under Section 33A.04.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under this section is a felony of the third degree if the person has been previously convicted of an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.06. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting

attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of telecommunications equipment, services, or devices.
Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.