

PRANK OR FELONY?

We'll look at pranks and stunts, pulled from real news stories. You'll get practice reviewing the facts of a case and actual Texas law and rendering your legal opinion on what, if any, charges could be filed.

The first thing to wrap your head around is that the law has absolutely no sense of humor.

True Story: *Teen brings a bottle of perfume to school, jams a wick into the bottle, lights it and runs away. The bottle falls over almost immediately, there's no explosion, no fire, no damages. The whole episode is caught on videotape.*

Prank or felony?

Illegal Weapons Possession

In Texas, possession of a bomb counts as an explosive weapon and is considered a Second-Degree felony. Possession of an explosive weapon at a school is a Third-Degree felony. Tex. Penal Code § 46.11. Read the definition of "explosive weapon" below:

"Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon. Tex. Penal Code § 46.01(2)

Question #1: You've read the facts, and you've read the law. What's your legal opinion? Could the perfume bottle be considered an explosive weapon in Texas?

You are likely saying to yourself that this was a silly prank that might net the kid afterschool detention but nothing more -- you would be wrong. Read on.

[*Real-Life Outcome:* This happened in Minneapolis, and the teen was actually charged with felony possession of an explosive/incendiary device.]

True Story: *Kids enter a school through an unlocked door and hurl eggs, spray everything they can find with paint and with the contents of two large fire extinguishers. They also take a cell phone with which they are easily tracked and caught.*

Prank or felony?

Answer: Two felonies and a misdemeanor. Criminal Mischief, Burglary, and Theft

Administrators estimate the cost of cleanup at a minimum of \$50,000 -- the cost of removing the fire extinguisher dust. The dust from the fire extinguishers isn't safe to breathe and additionally may have ruined 30 or so computers.

Criminal Mischief

- In Texas, vandalism is called "Criminal Mischief," and the punishment is set by the value of the damage done. Tex. Penal Code § 28.03(b)

Here are the penalty categories:

Up to \$20 – Class C misdemeanor

\$20 up to \$200 – Class B misdemeanor

\$200 up to \$750 – Class A misdemeanor
\$750 up to \$20,000 – Third Degree Felony

If the first principle to wrap your head around is that the law has no sense of humor, the second is that the universe is rife with unintended consequences.

The simple, childish vandalism that probably should have been handled by the school principal or, at the most, charged in the misdemeanor range jumped up to felony levels because removing fire extinguisher dust proved to be expensive and complicated.

Burglary

- Entering a habitation or a building not then open to the public or remaining inside a building after closing hours with intent to commit a felony or theft is burglary. Burglary of a building that's not a dwelling is a Second-Degree felony. Tex. Penal Code § 30.02

The statute does not require an actual “break-in” – it doesn't matter in Texas that the boys entered through an unlocked door.

Theft

The penalty categories for theft are the same as vandalism, above; a cell phone is probably in the Class B misdemeanor range. Tex. Penal Code § 31.03

[*Real-Life Outcome:* The actual crime happened in Georgia, and newspaper accounts stated that they would be charged with either felony criminal damage to property or felony burglary or possibly both.]

True Story: *Two teen girls create a Facebook page in the name of an ex-friend. They mock up obscene pictures and history and publicize it widely.*

Prank or felony?

Online Impersonation

In Texas, it is a third degree felony to use the name of another person to create a web page on or to post one or more messages on a commercial social networking site:

- (1) without obtaining the other person's consent; and
- (2) with the intent to harm, defraud, intimidate, or threaten any person.

The statute provides affirmative defenses, but the defense, “nobody liked her,” the defense attempted by these Florida teens, is not among them. Tex. Penal Code §33.07

[*Real-Life Outcome:* The Florida teens were charged with felony cyberbullying and stalking a minor under the age of 16.]

Question #2: Could these girls be charged under the Texas Online Impersonation law? Defend your legal opinion.

Attack of The Undead Database

Ask any law librarian: a substantial percentage of library patrons are trying to figure out how to get a “youthful indiscretion” removed from their record, (see generally [Texas Code of Criminal Procedure Chapter 55](#)) often because they are trapped living in their parents’ basement, finding it impossible to find a place to rent or work.

In the olden days of two or three years ago, running a criminal background check was fairly expensive and troublesome; not so now. The tiniest of infractions can follow you everywhere and forever, even if you successfully expunge your record, because the database your potential landlord or employer checks might not be up to date, and anything posted online lives forever.

True Story: *Carload of teenagers re-enacts a popular YouTube video, ordering food at the window, then yelling "Fire in the hole" and throwing creamed spinach at clerk working at drive-through. Unfortunately for everyone, the spinach was at least 180 degrees hot and seriously burned the clerk, who will require plastic surgery.*

Prank or felony?

Aggravated Assault

Under Texas law, this prank could be charged as a third degree felony, as it caused serious bodily harm. Civil suits could also be forthcoming. Tex. Penal Code §22.02

[*Real-Life Outcome:* California police expected to charge the carful of teens with felony assault.]

True Story: *A band advertises their new single "Traffic Jam" by blocking highway traffic with a very large truck, then performing atop it, a la Michael Jackson. The band members repeatedly refused to move when requested by police. One member takes the keys to the truck and drives away in another car; a tow truck had to tow the truck out of traffic.*

Hilarious prank or felony?

Evading Arrest or Detention

Criminal Mischief

Unlawful Restraint

Possible felony and several misdemeanors. They could be charged with a state jail felony for attempting to evade arrest by using a vehicle. Tex. Penal Code § 38.04. Other potential charges would include criminal mischief Tex. Penal Code § 28.03 and unlawful restraint. Tex. Penal Code § 20.02. Civil suits are also probable.

[*Real-Life Outcome:* The crime occurred in California; the band members were charged with a felony count of conspiracy, two misdemeanor counts of resisting police, creating a nuisance and false imprisonment.]

Question #3: List some possible consequences to the commuting public that day.

True Story: *Teens pull the prank known as "power boxing" -- shutting down a home's electricity at the breaker box -- at the home of a friend, then drive away, pursued by the family's father. The pranking driver runs a stop sign in the confusion, hitting another car and killing the driver.*

Prank or felony?

Manslaughter

Under Texas law, if a person "recklessly causes the death of an individual" he can be charged with manslaughter, a second degree felony. Tex. Penal Code § 19.04

[*Real-Life Outcome:* In this Idaho case, the 20 year old was convicted of misdemeanor vehicular manslaughter and served jail

time. He faces civil suits from the family of the victim, and the state is pursuing child support for the victim's four young children.

Here's a classic: late at night a young man orders pizzas to be delivered to a friend's home, he orders up a taxi; plus, he calls emergency services and reports an emergency at the same address.

Prank or felony?

False Alarm or Report

Theft

In Texas we would have a series of misdemeanors:

A false 911 call is covered by Tex. Penal Code § 42.06, a Class A misdemeanor. The penalty categories for theft are the same as vandalism, above; adding up the cost of the pizzas and the cab, the total would probably fall in the Class B misdemeanor range. Tex. Penal Code § 31.03

You might be thinking to yourself, "Why are the police involved at all, and why criminal charges for ordering pizza and not paying when one could just pay for the pizza?"

I might actually agree with you. My educated guess is that in at least some of these cases, the perpetrators themselves escalated the situation by being hugely unapologetic and possibly uttering phrases like, "It's just a joke -- whatcha gonna do, arrest me?"

If nobody else has ever told you this before, listen now: if you make a stupid mistake: Apologize. Respectfully.

[*Real-Life Outcome:* The Iowa man was charged with filing a false report with law enforcement officials for calling police without an emergency and two counts of fifth degree theft for ordering the cab

and the pizza without any intention of paying; all charges are misdemeanors.]

True Story: Kids film a "Jackass" style video involving setting a playground slide on fire.

Question #4 - What could go wrong? Stop. Before reading what did happen, list some possible consequences to the kids filming, the children playing at the park, the park property.

Prank or felony?

[Arson](#)

[Criminal Trespass](#)

[Criminal Mischief](#)

What went wrong: the fire burned out of control, causing over \$50,000 in damages to the park. Luckily nobody was injured.

In Texas, arson is a second degree felony; (Tex. Penal Code § 28.02) the actors could also be charged with criminal mischief (Tex. Penal Code § 28.03(b)). \$50,000 in damages would constitute a third degree felony.

Criminal trespass is generally a Class B misdemeanor. (Tex. Penal Code § 30.05) It could be a Class A misdemeanor, however, if: "the person carries a deadly weapon during the commission of the offense." How would you classify this? Would the gas and the match constitute a deadly weapon?

[*Real-Life Outcome:* In this New York case involving private school youths 16 and younger, all were charged with felony

arson, criminal mischief, reckless endangerment and trespassing.]

CONVICTED FELON: THE CONSEQUENCES

Under Texas law, conviction of a felony will net you prison time and fines.

Under Texas state law and United States federal law, felony convictions may render a person ineligible to vote, serve on a jury, receive federal student loans, serve in the military, hold public office, and serve in certain federal occupations. And that's the short list.

Here's the actual Texas law:

Texas Penal Code Sec. 12.32. FIRST DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

Sec. 12.33. SECOND DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

Sec. 12.34. THIRD DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) under Section 20A.03 or 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

Collateral Consequences of a Felony Conviction

This is as good a place as any to discuss the collateral consequences of a felony conviction. In Texas, a felony conviction will result in jail time and possible fines, but said conviction will also make you ineligible to be a doctor, lawyer, or teacher.

Maybe that isn't so very unexpected, but you may be surprised to learn that under Texas law this very day, with a felony conviction you would be ineligible to be an athletic trainer, ([Tex. Occupation Code § 451.251](#)) a dental hygienist ([Tex. Occupation Code § 263.001](#)) a landscape architect, ([Texas Administrative Rule: 22 TAC 3.149\(e\)](#)) a marriage and family therapist ([Tex. Occupation Code § 502.252](#)) a physical therapist, ([Tex. Occupation Code § 453.351](#)) a realtor ([Tex. Occupation Code § 1101.352](#)). There are many, many more professions on this list.

In Texas, some professional groups have rule-making authority and some lobby the state legislature for rules that govern their profession. These rules change constantly; oftentimes professional associations will take a strict stance against criminal convictions and then become more lenient and then strict again.

Think back to the kid who put the wick in the perfume bottle at school. In Texas, he could be convicted of Illegal Weapons Possession on school premises, a 3rd degree felony.

This translates into 2-10 years, a fine not to exceed \$10,000, and kiss goodbye dreams of becoming basically any licensed professional. It's also worth noting that just a few years ago the

State Bar of Texas stated that the median price per hour of a Criminal Defense lawyer in Texas was just under \$200.

The kid with the perfume bottle was actually charged, remember, in real life in Minnesota. Whether he did jail time I can't say for certain, but it is almost certainly true that his parents paid thousands of dollars in legal fees to deal with the situation, and probably nobody in the family got an iPhone that year.

...AND MORE CONSEQUENCES FOR TEXAS STUDENTS:

Texas Education Code Sec. 37.006. REMOVAL FOR CERTAIN CONDUCT. (a) A student shall be removed from class and placed in a disciplinary alternative education program as provided by Section 37.008 if the student:

(1) engages in conduct involving a public school that contains the elements of the offense of false alarm or report under Section 42.06, Penal Code, or terroristic threat under Section 22.07, Penal Code; or

(2) commits the following on or within 300 feet of school property, as measured from any point on the school's real property boundary line, or while attending a school-sponsored or school-related activity on or off of school property:

(A) engages in conduct punishable as a felony

Yes, you read that right.

In Texas, “engaging in conduct punishable as a felony” will send you directly to Alternative Ed.

Question #5: In Texas, would you have to be *convicted* of a felony to be send to alternative education? Read the statute, and give your legal opinion.

True Story: *Teens toss a frozen turkey out of a moving car on a highway as a prank.*

Question #6 - What could go wrong? Stop. Before reading what did happen, list some possible consequences to the people on the road that day.

Prank or felony?

Aggravated Assault

What went wrong: the turkey bounced and crashed through the windshield of a passing car, seriously injuring a woman who required weeks in a medically induced coma and surgeries to basically rebuild her face.

Under Texas law, this prank would constitute a third degree felony, as it caused serious bodily harm. Tex. Penal Code § 22.02

[*Real-Life Outcome:* The primary actor in this Long Island case was charged with first-degree assault, reckless endangerment, and criminal mischief; there were also civil suits.]

True Story: *High school kids pull a senior prank: pushing live chickens through a window in their school building in the middle of the night.*

Question #7 - What could go wrong? Stop. Before reading what did happen, list some possible consequences to poultry running amuck in a school building.

Prank or felony?

Criminal Trespass **Trespass on School Grounds** **Cruelty to Livestock**

What went wrong: really not much; the news story doesn't report any damages, and the perpetrators weren't charged with any sort of destruction of property charges. Apparently the chickens were also okay, whew.

Mostly misdemeanors. In Texas they could be charged with Criminal Trespass just by being there, which is a Class B misdemeanor. Penal Code § 30.05. In Texas there is a special prohibition against trespassing on school grounds, a Class C misdemeanor. Education Code § 37.107. It would also be possible to be charged with cruelty to livestock animals, depending upon the specific facts of the case. Penal Code § 42.09. The story does not mention any damages, but if there were damages Criminal Mischief charges would apply.

[*Real-Life Outcome:* These New Jersey high school kids were charged with trespassing and disorderly conduct. There were also some questions about whether the chickens were purchased or stolen; if stolen, obviously, theft charges will come into play.]

[MORE CONSEQUENCES: MISDEMEANOR PUNISHMENTS](#)

Under Texas law, conviction of a misdemeanor can net you prison time and fines.

Class A Misdemeanor [Tex. Penal Code § 12.21]

- Confinement in jail for a term not to exceed one year
- Fine not to exceed \$4,000
- Both such fine and confinement

Class B Misdemeanor [Tex. Penal Code § 12.22]

- Confinement in jail for a term not to exceed 180 days
- Fine not to exceed \$2,000
- Both such fine and confinement

Class C Misdemeanor [Tex. Penal Code § 12.23]

- Fine not to exceed \$500

Just because a prank can't be charged as a felony doesn't mean the consequences of the prank won't be a giant pain. Remember also that just a few years ago the State Bar of Texas stated that the median price per hour of a Criminal Defense lawyer in Texas was just under \$200. Never forget -- the Undead Databases of criminal

convictions can follow you basically forever, keeping you in low-wage jobs and living in your childhood bedroom for all eternity.

True Story: *College kids exchanging pranks, push lighted Roman Candle fireworks under the door of a friend's dorm room and run away.*

Question #8 - What could go wrong? Stop. Before reading what did happen, list the possible consequences to exploding fireworks in a small, confined space.

Prank or felony?

[Arson](#)

[Manslaughter](#)

What went wrong: when they saw from the street that the room was on fire, they tried to rescue the victim but the blaze was too intense, and everybody was just too drunk to think clearly.

Under Texas law, if a person "recklessly causes the death of an individual" he can be charged with manslaughter, a second degree felony. Tex. Penal Code § 19.04. In Texas, arson is a second degree felony; however an act of arson that causes death is a first degree felony. Tex. Penal Code § 28.02(a), (d).

[*Real-Life Outcome:* The Illinois college students pleaded guilty to involuntary manslaughter and served jail time. Civil wrongful death suits were eventually settled.]

A Note on Civil Suits

I have breezily mentioned in some cases that civil lawsuits were filed in addition to the criminal actions -- but please note that just because a civil suit cannot result in your imprisonment, that does

not mean that it will not have a tremendous impact upon your life. In the fireworks case, the civil suits consumed the lives of these students and their parents for over three years and included court appearances, attorney costs, and long depositions in attorney offices where the students were questioned in minutest detail about the night they accidentally killed a friend.

Let's review some of our true stories and see what kind of civil actions might be filed:

The victim of cyber-stalking could sue for damages for “intentional infliction of emotional distress” and defamation of character.

Question #9: In the Traffic Jam story, what if someone was on the way to the hospital for a medical emergency and was delayed because of the prank. What kind of lawsuit might they have?

Question #10: What if you were the victim? What if you were the guy who needs plastic surgery to fix his spinach burns, or the lady hit by the frozen turkey who now has titanium plates in her face?

What sort of damages could you sue for?

Discuss what damages you might have as a result of the prank. Add them all up. [Read about damages under Texas law.](#)

Compensatory Damages include out-of pocket damages, medical expenses, lost wages past and present, damages for pain and suffering.

Exemplary Damages are issued as a penalty, not for compensation.

Remember, in some of the cases we've read, the pranksters eventually paid out *both* criminal and civil fines.

True Story: *Two words written in pencil in a boy's restroom at a public school, "bomb school."*

Prank or felony?

False Alarm or Report

Terroristic Threat

Making a false report of an emergency involving a public primary or secondary school raises the level of punishment to a state jail felony. Tex. Penal Code § 42.06(b). The student would also face removal to an alternative education program if he "engages in conduct involving a public school that contains the elements of the offense of false alarm or report." Tex. Education Code § 37.006. If it had been a serious terroristic threat, it would come under Tex. Penal Code § 22.07 and be a Class A or B misdemeanor, depending upon the facts.

[*Real-Life Outcome:* This case actually did occur in Texas; newspaper accounts stated that charges and school disciplinary action were still pending.]

Final Thoughts

To prank or not to prank is your choice; more often than not, pranks are fun, not felonious. Just, in your own self-interest, keep in mind: (1) the law has no sense of humor; (2) the universe is rife with unintended consequences; (3) the undead database will haunt you until the end of days.

[More "Prank or Felony" information online.](#)