

PENAL CODE CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY
DAMAGE OR DESTRUCTION

PENAL CODE

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR
DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 1, eff.
Sept. 1, 1979; Acts 1989, 71st Leg., ch. 31, Sec. 1, eff. Sept. 1,
1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.02. ARSON. (a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land; or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or destruction;

(C) knowing that it is subject to a mortgage or other security interest;

(D) knowing that it is located on property belonging to another;

(E) knowing that it has located within it property belonging to another; or

(F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

(1) bodily injury or death was suffered by any person by reason of the commission of the offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) It is a felony of the third degree if a person commits an offense under Subsection (a)(2) of this section and the person intentionally starts a fire in or on a building, habitation, or vehicle, with intent to damage or destroy property belonging to another, or with intent to injure any person, and in so doing, recklessly causes damage to the building, habitation, or vehicle.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (f) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (f), under the other subsection of this section, or under the other section of this code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1837, ch. 425, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 31, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 976, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 960, Sec. 1, eff. September 1, 2005.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings,

including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than \$50; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$50 or more but less than \$500;

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is:

(i) \$500 or more but less than \$1,500; or

(ii) less than \$1,500 and the actor causes in whole or in part impairment or interruption of public communications, public transportation, public gas or power supply, or other public service, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas or power supply; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) \$1,500 or more but less than \$20,000;

(B) less than \$1,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon; or

(C) less than \$1,500, if the property was a fence used for the production or containment of:

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code;

(5) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that

provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(g) In this section:

(1) "Explosive weapon" means any explosive or incendiary device 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) an explosive or incendiary bomb, grenade, rocket, and mine;

(B) a device designed, made, or adapted for delivering or shooting an explosive weapon; and

(C) a device designed, made, or adapted to start a fire in a time-delayed manner.

(2) "Firearm" has the meaning assigned by Section 46.01.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) "Aluminum wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent aluminum, including any tubing or conduit attached to the wire or cable.

(5) "Bronze wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent bronze, including any tubing or conduit attached to the wire or cable.

(6) "Copper wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent copper, including any tubing or conduit attached to the wire or cable.

(7) "Transportation communications equipment" means:

(A) an official traffic-control device, railroad sign or signal, or traffic-control signal, as those terms are defined by Section 541.304, Transportation Code; or

(B) a sign, signal, or device erected by a railroad, public body, or public officer to direct the movement of a railroad train, as defined by Section 541.202, Transportation Code.

(8) "Transportation communications device" means any item attached to transportation communications equipment,

including aluminum wiring, bronze wiring, and copper wiring.

(h) An offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is \$1,500 or more but less than \$20,000 and the damage or destruction is inflicted on a public or private elementary school, secondary school, or institution of higher education.

(i) Notwithstanding Subsection (b), an offense under this section is a felony of the first degree if the property is livestock and the damage is caused by introducing bovine spongiform encephalopathy, commonly known as mad cow disease, or a disease described by Section 161.041(a), Agriculture Code. In this subsection, "livestock" has the meaning assigned by Section 161.001, Agriculture Code.

(j) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if:

(1) the tangible property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device; and

(2) the amount of the pecuniary loss to the tangible property is less than \$100,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 66, ch. 29, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 559, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1253, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 42, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 11.280, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 747, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 976, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 690, Sec. 1, eff. September 1,

2007.

Acts 2007, 80th Leg., R.S., Ch. 690, Sec. 2, eff. September 1, 2007.

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor. Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.05. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS. (a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes

evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c), the amount of loss is deemed to be greater than \$500 but less than \$1,500.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 2, eff.

Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (a) In this section:

(1) "Railroad property" means:

(A) a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad; or

(B) a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.

(2) "Tamper" means to move, alter, or interfere with railroad property.

(b) A person commits an offense if the person:

(1) throws an object or discharges a firearm or weapon at a train or rail-mounted work equipment; or

(2) without the effective consent of the owner:

(A) enters or remains on railroad property, knowing that it is railroad property;

(B) tampers with railroad property;

(C) places an obstruction on a railroad track or right-of-way; or

(D) causes in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks.

(c) An offense under Subsection (b)(1) is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b)(2)(A) is a Class C misdemeanor.

(e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(3) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the amount of the pecuniary loss is \$200,000 or more.

(f) The conduct described in Subsection (b)(2)(A) is not an offense under this section if it is undertaken by an employee of the railroad or by a representative of a labor organization which represents or is seeking to represent the employees of the railroad as long as the employee or representative has a right to engage in such conduct under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Added by Acts 1989, 71st Leg., ch. 908, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.08. GRAFFITI. (a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

- (1) aerosol paint;
- (2) an indelible marker; or
- (3) an etching or engraving device.

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class B misdemeanor if the amount of pecuniary loss is less than \$500;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500;

(3) a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the amount of pecuniary loss is \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the offense.

(d) An offense under this section is a state jail felony if:

(1) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; and

(2) the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000.

(e) In this section:

(1) "Aerosol paint" means an aerosolized paint

product.

(2) "Etching or engraving device" means a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.

(3) "Indelible marker" means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

(4) "Institution of higher education" has the meaning assigned by Section 481.134, Health and Safety Code.

(5) "School" means a private or public elementary or secondary school.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 166, Sec. 1, 2, eff. Sept. 1,

1999; Acts 1999, 76th Leg., ch. 695, Sec. 1, eff. Sept. 1, 1999;

Acts 2001, 77th Leg., ch. 1420, Sec. 16.001, eff. Sept. 1, 2001.