

SUBJECT: Restitution and community service requirements for graffiti offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

1 absent — Riddle

WITNESSES: For — John Eixman, Houston Police Department; Curtis McMinn, Houston Food Bank; Armando V. Rodriguez; (*Registered, but did not testify*: Carlos Contreras, City of San Antonio; Samuel England, American Civil Liberties Union of Texas; Robert Hills, National Council to Prevent Delinquency; Shanna Igo, Texas Municipal League; David Mintz, Texas Apartment Association)

Against — None

BACKGROUND: Under Penal Code, sec. 28.08, a person commits a graffiti offense if he marks another's tangible property, without consent, with aerosol paint, indelible marker, or an etching or engraving device. An offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the loss to real or tangible personal property is less than \$20,000, and the marking is made on a school, institution of higher education, place of worship or human burial, public monument, or a community center that provides medical, social, or educational programs.

Under Code of Criminal Procedure, art. 42.037, a court may order a defendant convicted of a graffiti offense to make restitution to the victim by removing or painting over any markings, or by paying the value of the property on the date of the damage or sentencing, whichever is greater.

If a defendant is convicted of a graffiti offense against public property, a street sign, or official traffic control device, the court must order the defendant to make restitution to the political subdivision that owns the property. The defendant can make restitution by paying the lesser of:

- the cost to restore the property; or
- the greater of the value of the property on the date of damage or date of sentencing.
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If a defendant is financially unable to make restitution, the court may order the defendant to perform community service, including restoring the property.

Under Family Code, sec. 54.046, if a juvenile is adjudicated as having been involved in a graffiti offense, the court may order the juvenile to reimburse the owner for the cost of restoring the property, or, with the consent of the owner, to restore the property by removing or painting over any markings the juvenile made. If the offense is against public property, a street sign, or official traffic control device, the court may order the juvenile to pay the cost to replace or restore the property, or, with the consent of the political subdivision, to make restitution by restoring the property. If the juvenile or person responsible for the juvenile is financially unable to pay restitution, the court may order the juvenile to perform community service, including restoring the property.

DIGEST:

CSHB 1633 would amend Penal Code, sec. 28.08 to provide that a person would commit a graffiti offense by marking another's tangible property, without consent, with any paint, not just aerosol. An offense would be a state jail felony if:

- the marking was made on a school, institution of higher education, place of worship or human burial, public monument, or a community center that provides medical, social, or educational programs; or
- the person had been previously convicted of a graffiti offense two or more times; and
- the loss to real or tangible personal property was any amount less than \$20,000.

If an adult defendant was convicted of a graffiti offense, the court would be required to order restitution by ordering the offender to reimburse the owner for the cost of restoring the property, or, with the consent of the owner, to restore the property by removing or painting over any markings the offender made.

If a juvenile was adjudicated as having engaged in a graffiti offense, the court would be required to order the juvenile to make restitution.

If the damaged property was public property, a street sign, or official traffic control device, the court would be required to order the adult defendant or juvenile to replace or restore the property, with the consent of the political subdivision, or to pay the cost to replace or restore the property.

If the adult defendant, juvenile, or the person responsible for the juvenile was financially unable to pay restitution, the court could order the offender to perform community service. This would be in addition to community service hours required of a juvenile placed on probation for a graffiti offense.

If a juvenile or adult defendant was ordered to make restitution as a condition of probation, community supervision, parole, or mandatory supervision, the court or parole panel would be required to direct the defendant or juvenile to deliver the amount or property due as restitution to his supervising officer or a juvenile probation department for transfer to the owner. The juvenile probation department or defendant's supervising officer would be required to notify the court when the defendant or juvenile had delivered the full amount of restitution ordered.

A court granting community supervision to a defendant convicted of a graffiti offense or placing a juvenile on probation for a graffiti offense would have to require, as a condition of supervision or probation, that the defendant or juvenile perform at least 15 hours of community service if the financial loss from the offense was between \$50 and \$500, or at least 30 hours of community service if the financial loss was \$500 or more.

The bill would apply only to offenses committed on or after the bill's effective date of September 1, 2009.

**SUPPORTERS
SAY:**

By requiring restitution and setting minimum community service guidelines, CSHB 1633 would provide an appropriate penalty for graffiti offenses without increasing the financial burden on offenders. The bill would allow graffiti offenders, often juveniles and young adults, to avoid jail, be involved in the community, feel productive, and take pride in their contribution. Increasing the penalties for repeat offenders would act as a deterrent.

Redefining a graffiti offense as one committed with paint, rather than just aerosol paint, would allow the statute to encompass more forms of graffiti.

OPPONENTS
SAY:

No apparent opposition

NOTES:

CSHB 1633 differs from the bill as filed by adding a provision that would change a graffiti offense to one committed with paint, rather than just aerosol paint, and provisions that would change the circumstances under which an offense was a state jail felony. The substitute also added provisions that would require a juvenile or adult offender placed on community supervision to make restitution to a juvenile probation department or supervising officer for transfer to the property owner, and removed provisions that would have required such an offender to serve at least five hours of community service if the financial loss from the offense was \$50 or less. Finally, the substitute added provisions that would require a court to order restitution for juveniles and adults who had committed graffiti offenses.