

SUBJECT: Revised penalties and mandatory jail time for graffiti offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Zedler

0 nays

1 absent — Rodriguez

WITNESSES: For — David Garza, City of San Antonio; Cliff Herberg, for Susan D. Reed, Bexar County District Attorney's Office; William McDonough, Great Northwest HOA; (*Registered, but did not testify*: John Chancellor, Texas Police Chiefs Association; Shanna Igo, Texas Municipal League; Jim Jones, San Antonio Police Department; TJ Patterson, City of Fort Worth; Kevin Petroff, Harris County District Attorney's Office; Daphne Session; Jessica Sloman, Houston Police Department)

Against — None

BACKGROUND: **General graffiti penalties.** Under Penal Code, sec. 28.08, graffiti offenses are punishable by varying degrees, depending on the dollar amount of damage to the property, from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for damage less than \$500 to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) for damage of \$200,000 or more.

A graffiti 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 damage caused is less than \$20,000 and the marking is made on a school, higher education institution, place of worship or human burial, public monument, or community center that provides medical, social, or educational programs. Civil Practice and Remedies Code, sec. 125.061 also includes graffiti offenses involving the above protected structures in its definition of gang activity.

Driver's license denial and suspension. A court may suspend a convicted graffiti offender's driver's license for one year after the final conviction. Transportation Code, ch. 521 also allows a court to order the

Department of Public Safety (DPS) to deny an application for reinstatement or issuance of a driver's license to a person convicted of a graffiti offense who did not have a driver's license at the time of conviction. The period of license denial is one year after the person applied to DPS for reinstatement or issuance. A person whose license is suspended is still eligible to receive an occupational license.

DIGEST:

General graffiti penalties. CSHB 38 would remove the penalty value ladder for graffiti and instead make the offense a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). The bill would set a 72-hour minimum time of confinement for a graffiti offense. Graffiti on a protected type of structure would remain a state-jail felony, but city halls and courthouses would be added to the types of structures protected and the maximum \$20,000 damage limit would be eliminated. City halls and courthouses also would be included among the types of structures for which a graffiti offense was classified as gang activity.

The punishment would be increased to the next penalty category if the defendant had been convicted previously of a graffiti offense. The defendant would be considered convicted for this purpose if the defendant received a graffiti conviction in another state or received deferred adjudication for the previous graffiti offense, regardless of whether the sentence was imposed or probated or community supervision was subsequently discharged.

Driver's license denial and suspension. CSHB 38 would require, rather than permit, a court to suspend a convicted graffiti offender's driver's license. A juvenile court also would be required to order the suspension of a provisional license for a graffiti offense. CSHB 38 would require, rather than permit, a court to order DPS to deny an application for reinstatement or issuance of a driver's license or provisional license. The period of suspension would be two years, rather than one, and the period of license denial would be two years, rather than one. A person whose license was suspended would be eligible to receive a hardship license, in addition to the occupational license already allowed by law.

The bill would take effect September 1, 2011, and would apply only to offenses committed or causes of action accrued on or after that date.

**SUPPORTERS
SAY:**

Graffiti is vandalism, not art, and CSHB 38 would make the punishment fit the crime by ensuring that a graffiti offense carried at least a class A misdemeanor penalty, minimum jail time of 72 hours, and required driver's license suspension. The current value-ladder approach to punishment for graffiti damage accounts for cleanup costs and other monetary loss experienced by the property owner, but does not account for the actual damage caused to the community by graffiti. Significant damage is sustained by a community plagued with graffiti, including a sense of insecurity, heightened fear of gang activity, a lowering of property values from the perception of blight, and reduced local business profits.

The value ladder is an unworkable remnant from when graffiti was carved out of the criminal mischief offense. Graffiti damages are difficult and time consuming for law enforcement to prove, and the ultimate goal should be to deter the behavior. Deterring graffiti would save the billions spent in the U.S. every year on cleanup costs. In one year of cleanup costs alone, Fort Worth spends about \$500,000, Houston about \$600,000, and San Antonio about \$1,000,000. These cleanup costs are essentially passed onto taxpayers. The class A misdemeanor penalty coupled with mandatory jail time, required driver's license suspension, and enhanced penalties for repeat offenders would better deter offenders than the value-ladder penalty system.

CSHB 38 would go a long way toward teaching kids that graffiti is a serious crime. Nothing would get that message across to juveniles better than making them spend a few nights in jail and taking away their driver's licenses. Even though jail time and driver's license suspension could happen now, requiring both of them would prove a much better deterrent. Family Code, sec. 54.046 already requires juvenile courts in graffiti probation cases to order reimbursement for or restoration of the marked property and requires the courts to order community service. Rather than changing anything related to the juvenile justice system, the requirements of CSHB 38 would complement the requirements already in the law.

Enhanced punishments for repeat offenders also would help deter these criminals. It is not unusual for a building to be retagged repeatedly, and the law should punish that repeat offense more harshly. The enhancement would rightly apply even if the person received deferred adjudication for the first graffiti offense.

OPPONENTS
SAY:

CSHB 38 would conflict with the Family Code on juvenile punishment, which generally requires progressive sanctions and confinement only under very narrow circumstances. Mandatory jail time and mandatory license suspension for juveniles would be inappropriate. The discretion of the judge to impose the punishment deemed most effective for the child should be preserved.

CSHB 38 also would continue the ineffective practice of enhancing penalties for graffiti. Such practice is ineffective because so few perpetrators are caught and convicted that enhancements do not serve as a deterrent. Moreover, if graffiti offenders were caught, increasing the penalty would result in increased demand on jails, which is not an efficient use of funds, as these offenders are not dangerous enough to warrant lock-up.

OTHER
OPPONENTS
SAY:

Although the 72-hour minimum confinement proposed in CSHB 38 is a good idea, it would not be possible for a state-jail felony sentence because a 180-day minimum confinement is already required. In addition, such a minimum sentence could be probated, resulting in no jail time at all.

NOTES:

The substitute added city halls and courthouses to the list of state-jail felony-protected structures, while the original bill added government buildings. In defining gang activity for public nuisance purposes, the substitute would include graffiti offense conduct that occurred at a city hall or a courthouse, while the original bill would have included graffiti offense conduct that occurred at a government building.

A related bill, HB 690 by Martinez Fischer, which passed the House by 141-0 on April 6 and was referred to the Senate Criminal Justice Committee on April 20, would add historic structures to the list of protected structures under the state-jail felony graffiti offense.