

SUBJECT: Graffiti offenses and access to aerosol paint

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, Naishtat, A. Reyna, Smith, Williams

0 nays

WITNESSES: For — Elaine S. Hengen, City of El Paso; Bonnie Escobar, Community Legislative Agenda; Ed Howard, Walmart Stores Inc.; Michael R. Moore, Texas Retailers Association; Sharon Hull, Southwest Hardware and Farm Implement Association

Against — Phil Cates, Texas Paint Council; Robert N. Hills, National Council to Prevent Delinquency

On — Charles Branton, Texas Department of Health; Robert Dawson

BACKGROUND : The Penal Code makes it an offense for a person to intentionally or knowingly make markings, including inscriptions, slogans, drawings, or paintings, on another's tangible property without consent. The offense carries penalties ranging from a Class C misdemeanor, with a maximum penalty of a \$500 fine, if the amount of pecuniary loss is less than \$20, to a first degree felony, punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000, if the loss totals \$200,000 or more.

DIGEST: CSHB 1714 would amend the Penal Code to make it an offense for a person to intentionally or knowingly place “graffiti” on the tangible property of another without consent. The bill also would create graffiti eradication funds from fees imposed on defendants convicted of graffiti offense; regulate access to aerosol paint in business establishments; require businesses selling aerosol paints to comply with display restrictions; and impose civil penalties for failure to comply.

Graffiti offense

CSHB 1714 would add a new subsection to the Penal Code defining “graffiti” as a word, figure, mark, painting, covering, drawing, slogan, design, or other inscription.

The penalty for the graffiti offense would be increased to the punishment for the next highest category of offense, up to first degree felony, if the graffiti was placed on public property. “Public property” would mean property owned or leased by the state or a political subdivision of the state.

Graffiti eradication funds

CSHB 1714 also would amend the Code of Criminal Procedure to establish graffiti eradication funds. A defendant convicted of the graffiti offense in a justice, county, or district court or country court at law would have to pay a \$5 graffiti eradication fee as a court cost. Municipalities could create a municipal graffiti eradication fund and require a defendant convicted of the graffiti offense in a municipal court to pay a \$5 graffiti eradication fee as a cost of court. Defendants would be considered convicted if a sentence was imposed, they received community supervision, including deferred adjudication, or the court deferred final disposition of their case.

Court clerks would have to collect the fees and remit them to the appropriate authority. The county graffiti eradication fund would be administered by or under the direction of the commissioners court. The municipal graffiti eradication fund would be administered by or under the direction of the governing body of the municipality.

A graffiti eradication fund could be used only to: repair damage caused by the commission of the graffiti offense; provide educational and intervention programs designed to prevent individuals from committing graffiti offenses; and provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders committing graffiti offenses.

Restrictions on aerosol paint displays

CSHB 1714 also would amend the Health and Safety Code to regulate access to aerosol paint in business establishments. A business establishment holding a glue and paint sales permit would have to comply with certain monitoring and accessibility requirements for displaying aerosol paint, unless the establishment used a computerized checkout system at the point of sale for merchandise that reminded cashiers that persons purchasing aerosol paint must be over 18 years of age.

For a first violation of display regulations, a court could issue a warning or impose a civil penalty of \$50. For subsequent violations, the establishment would be liable for a civil penalty of \$100. For the third violation of display regulations in the same calendar year, a court could issue an injunction prohibiting the establishment from selling aerosol paint for a period of two years or less. An establishment violating this injunction would be liable for a civil penalty of \$100, in addition to any other penalty authorized by law, for each day the violation continued.

If a business establishment failed to pay a penalty for violating aerosol paint display regulations, the court could issue an injunction prohibiting it from selling aerosol paint until the establishment paid the penalty and attorney's fees and court costs.

The attorney general or the district or county attorney could file suit for penalizing establishments violating the regulations. A penalty collected under these provisions would be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

CSHB 1714 would take effect September 1, 1997, and would apply only to an offense committed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1714 would provide effective tools for numerous Texas communities facing serious graffiti problems. Graffiti is expensive to clean up, erodes the quality of life in those communities, and often instills fear in its victims because of its associations with gangs and hate groups. CSHB 1714 would help fight graffiti by providing tougher penalties, establishing a graffiti eradication fund, and restricting access to aerosol paint in stores.

The \$5 graffiti eradication fee could provide many communities with a significant fund for graffiti clean-up, prevention programs, and public rewards to increase apprehension and prosecution of graffiti offenders. On the other hand, \$5 would not be overly burdensome for convicted defendants in relation to other court costs.

Restricting access to aerosol paint in stores would keep underage persons from purchasing it and reduce the incidences of graffiti offenses. The law already prohibits individuals under 18 from purchasing aerosol paints. CSHB 1714 would help enforce that prohibition by requiring businesses to limit access to these paints. Tobacco and alcohol sales also are restricted, and retailers who fail to comply with those restrictions also incur penalties. The concept is not new or unprecedented.

The bill would appropriately target graffiti on public property because it is hit harder and more often with graffiti. The tougher penalty for graffiti on public property would be an effective deterrent.

OPPONENTS
SAY:

CSHB 1714 should not limit tougher penalties to graffiti offenses committed on public property. Many private businesses and homeowners experience the same problems with graffiti as public properties do. The state should make it obvious that this is an offense that will not be tolerated anywhere.

Imposing tougher penalties on offenders would be preferable to penalizing businesses that sell aerosol paints for legitimate use. The restricted access requirements would impose onerous burdens on small businesses, especially hobby shops that stock and sell a wide variety of such items. Corporate citizens that are already paying taxes for government services should not be deputized against their will and made to foot the bill for enforcing state laws.

OTHER
OPPONENTS
SAY:

A large loophole in CSHB 1714 would render the restrictions on access to aerosol paint ineffective. Stores with computerized checkout systems should not be exempted from the regulations because checkout system alerts can be overridden with the push of the button. Enforcement by cashiers would be unreliable and inconsistent, varying because of such factors as training, store policies, and personal motivation. Also, this provision would effectively set up one law for bigger stores that can afford such checkout systems and another law for smaller stores that cannot. The smaller stores would be

stuck with the more burdensome aerosol paint display requirements. In addition, leaving aerosol paint unprotected in large stores would allow more shoplifting of paint, which would by-pass the checkout system altogether.

The graffiti eradication fee should be higher than \$5. At this level, it would take too long to accumulate enough money in the graffiti eradication fund to provide significant clean-up and prevention services.

NOTES:

The committee substitute deleted provisions that would have authorized driver's license suspension or denial for persons committing graffiti offenses.

The companion bill, CSSB 758 by Shapleigh, passed the Senate on April 8 and was reported favorably, as substituted, by the House Juvenile Justice and Family Issues Committee on April 16, making it eligible to be considered in lieu of HB 1714. CSSB 758 would apply increased penalties for graffiti offenses regardless of where committed. It would also authorize suspension or denial of driver's license or permit for graffiti offenses.

The 74th Legislature enacted a similar bill, SB 707 by Rosson, which would have made it an offense for a person younger than 18 to knowingly or intentionally possess aerosol paint, and it would have required restricted access to aerosol paints in business establishments. SB 707 would not have exempted stores with computerized checkout systems with alerts from the paint display regulations. SB 707 was vetoed by the governor.

A similar bill this session, HB 260 by Pickett, et al., creating a new criminal offense of graffiti, passed the House on April 2 and has been referred to the Senate Criminal Justice Committee.