

SUBJECT: Creating separate criminal offense for graffiti

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Place, Talton, Dunnam, Nixon, A. Reyna
3 nays — Galloway, Hinojosa, Keel
1 absent — Farrar

WITNESSES: None

BACKGROUND : Under the Penal Code, criminal mischief includes intentionally or knowingly making markings, including inscriptions, slogans, drawings or paintings, on someone's property without consent. Offenses are punished according to a “value ladder” that takes into account the value of the damage to the property. For example, the offense is a Class C misdemeanor (maximum penalty of a \$500 fine) if the damage is less than \$20 and a Class B misdemeanor (maximum penalty of 180 days in jail and a \$2,000 fine) for damage valued at \$20 to \$500. The maximum punishment is 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 over \$200,000.

DIGEST: CSHB 260 would move the section of the Penal Code that classifies as criminal mischief making markings, slogans, drawings or paintings on property to a new offense specifically covering graffiti. In defining graffiti the bill would add coverings, designs, etchings or other inscriptions.

Offenses under the new section would be punished based on the value of property damaged, according to the same value ladder used for criminal mischief. The new section would include the current provision making an offense a state jail felony even if the damage were less than \$20,000 if the graffiti were placed on places of worship and human burial, public monuments, or community centers that provide medical, social, or educational programs. CSHB 260 would also track the criminal mischief statute by adding together the value of damage to more than one piece of property if the damage were part of the same scheme or course of conduct.

CSHB 260 would take effect September 1, 1997, and apply to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 260 would create a specific offense for graffiti so that data on this crime can be collected and tracked separately from other forms of criminal mischief. Since graffiti now is classified as criminal mischief, offenses are lumped together with other forms of this crime, such as puncturing tires and egging houses. The only way to gather statistics on the incidence and prevalence of graffiti is to sort through law enforcement and court records, an inefficient, time-consuming and inadequate method for tracking this growing problem.

Having easily accessible, uniform graffiti statistics would allow law enforcement officers, prosecutors, courts, and concerned Texans to measure the extent of the graffiti problem. While cities have been reporting an explosion of graffiti, absent CSHB 260 they lack any adequate statistical method to measure the problem. By tracking changes in the number of graffiti offenses, communities would be able to evaluate whether their efforts against graffiti are working so they can spend their resources wisely. Local law enforcement offices and other Texans should be given the necessary tools to continue their fight against this blight.

Although the Penal Code was recodified in 1993 to cover broad categories of offenses, it is clear that in this case the framework is inadequate. Since the 1993 revisions, other sections of the code have been amended to establish individual offenses. For example, in 1995 stalking was removed from the harassment statute and placed in its own section.

CSHB 260 would not substantively change the current definition of or punishment for graffiti or other forms of criminal mischief. The current language that defines offenses would be transferred to the new section, ensuring that all actions currently covered by the law would continue to be outlawed. Other acts that are not graffiti but may involve unauthorized markings on property would still be prosecutable under the criminal mischief statute that makes it illegal to damage or destroy another's property.

The new section would include in the definition additional descriptions of graffiti to cover newer forms of property destruction, such as etchings. The

new section also would include the phrase “or other inscription” to cover all actions that could be used to make graffiti. Punishment would be the same under as under current law, using a value ladder that increases punishment as the value of the destroyed property increases.

CSHB 260 would not place any significant new burden on law enforcement agencies. They would simply have to create a new offense code for graffiti and code the new offenses accordingly.

**OPPONENTS
SAY:**

It would be unnecessary and unwise to establish a specific offense for graffiti when the offense is adequately covered by the broad language in the current criminal mischief statute that already makes unauthorized markings on private property a crime. Because the 1993 Penal Code recodification was carefully crafted to establish broad coverage and eliminate special provisions, the balance of offenses and penalties should not be distorted for specific situations.

CSHB 260 could actually make it harder to prosecute some criminal acts that deface property with markings. The current statute outlaws all acts that fit the definition of “markings, slogans, drawings or paintings.” This broad language does not restrict the offense to acts commonly recognized as graffiti. Courts may interpret CSHB 260 as narrowing the current definition of criminal mischief so that it would apply only to what is traditionally thought of as graffiti. For example, a person who, without a property owner's consent, paints something that looks like a company logo on a building can now be prosecuted under the existing criminal mischief law. However, if the painting does not look like what is commonly thought of as “graffiti,” it would be more difficult to prosecute under the new graffiti offense defined by CSHB 260.

NOTES:

The original version would have changed the criminal mischief statute, replacing the description of “markings, slogans, drawings or paintings” with the word “graffiti” and adding a definition of the term, with additional descriptions. The committee substitute established the new section for graffiti and added “etching” to the definition.