

- SUBJECT:** Graffiti and the payment and use of a juvenile delinquency prevention fee
- COMMITTEE:** Judiciary — committee substitute recommended
- VOTE:** 8 ayes — Hartnett, Homer, Hopson, Alonzo, Gonzales, Goolsby, Hughes, Krusee
- 0 nays
- 1 absent — R. Cook
- WITNESSES:** For — (*Registered, but did not testify:* Cari Hall; Amanda Shippey)
- Against — None
- BACKGROUND:** Under the Penal Code, sec. 28.08, it is a crime to intentionally or knowingly make markings, including inscriptions, slogans, drawings, or paintings on the property of another without the owner's consent. The penalty ladder is based on the value of the damage done. Courts may order restitution for the damage done under Code of Criminal Procedure, art. 42.037. Code of Criminal Procedure, art. 102.0171 authorizes a \$5 graffiti eradication fee that can be used to:
- repair graffiti damage;
  - provide educational programs designed to deter crime;
  - provide public rewards for information regarding acts of criminal graffiti;
  - provide funding for teen recognition and teen recreation programs;
  - provide funding for local juvenile probation department; and
  - provide educational and intervention programs designed to prevent juveniles from engaging in delinquent conduct.
- DIGEST:** CSHB 2151 would permit a court to order a person who defaced private property to make the repairs personally or pay restitution. It also would direct a court to order a person who defaced a traffic control device to pay restitution to the political subdivision that had placed or erected the sign. The amount of restitution would be equal to the lesser of:

- the cost to the political subdivision of restoring the street sign or official traffic-control device (541.304, Transportation Code); or
- the value of the property on the date of the damage; or the value of the property on the date of sentencing less the value of any part of the property that was returned on the date it was returned, whichever was greater.

The bill also would change the \$5 graffiti eradication fee to a \$50 juvenile delinquency prevention fee. It would expand the fee's use to include printed educational and other materials for distribution to primary and secondary school students in an effort to prevent graffiti.

CSHB 2151 also would amend Family Code, sec. 54.046 to allow a judge, as a condition of probation for a child placed on probation, to order the child to make restitution by reimbursing the owner for the cost of restoring the property or, with the owner's permission, personally restoring the property by removing or painting over any markings the child made. A judge in a disposition hearing for a child adjudicated to have engaged in delinquent conduct could order a child or parent or person responsible for the child's support to reimburse the owner or restore the property in the same manner.

A court also would order a child placed on probation to make restitution to a political subdivision whose sign or traffic-control device the child damaged with graffiti. A court in a disposition hearing for a child adjudicated to have engaged in delinquent conduct could order the child or parent or other person responsible for the child's support similarly to make restitution for defacing a sign or traffic control device.

Restitution would be the lesser of either the cost of replacement or cost of repair. If the court ordered restitution and the child or the child's guardian was unable to pay restitution to the political subdivision, then the court could order the child or the child's guardian to perform community service to satisfy the debt.

CSHB 2151 would define "official traffic control devices" under Transportation Code, sec. 541.304, as a sign or device placed or erected by a public body or officer having jurisdiction and that was used to regulate, warn, or guide traffic.

CSHB 2151 would amend sec. 102.041; 102.061; and 102.081; Government Code, to allow courts to collect the new \$50 juvenile delinquency prevention fee.

The bill would take effect on September 1, 2007, and would apply only to an offense on or after the effective date.

**SUPPORTERS  
SAY:**

Current laws and programs are not effectively deterring criminal graffiti. CSHB 2151 would address this by shifting the repair costs from the victim to the offender and allowing a court to order a defendant to either pay restitution or personally repair the damage. If the offense were against public property, a judge could order the defendant, the defendant's guardian, or the person responsible for the child's support to pay restitution or perform community service. Restitution allows a perpetrator to experience first hand the value of the damage done and to relate to the victim. Such experiences help teach personal responsibility and might help prevent the graffitist from re-offending.

CSHB 2151 would increase the graffiti eradication fee from \$5 to a \$50 juvenile delinquency prevention fee. This fee would be used for education of elementary and middle school students in an effort to deter crime. The old fee was rarely collected and raised very little. An expanded fee would encourage collection by local governments and could provide much-needed funds for education programs designed to combat juvenile delinquency.

**OPPONENTS  
SAY:**

CSHB 2151 would be part of the rising tide of fees being leveled against offenders. The more fees the state piles onto offenders, the harder it becomes for them to pay their debt to society and reintegrate back into it. The majority of probation and parole revocations are a result of failure to pay fines and fees. The more the state increases these fees, the less successful these release programs will become.