

- SUBJECT:** State jail felony for graffiti on an historic structure
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE** 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler
0 nays
- WITNESSES:** For — David Garza, City of San Antonio
Against — None
On — Gregory Smith, National Park Service/U.S. Department of the Interior; David Vekasy, San Antonio Missions National Historical Park; Mark Wolfe, Texas Historical Commission
- BACKGROUND:** Penalties for graffiti offenses in Penal Code, sec. 28.08 currently range from a Class B misdemeanor for damage less than \$500 to a first-degree felony for damage of \$200,000 or more.
- A graffiti offense is a state jail felony if the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the damage caused is less than \$20,000.
- Local Government Code, sec. 315.006 defines historic structures or properties to include structures that are:
- included on the National Register of Historic Places;
 - designated as a Recorded Texas Historic Landmark;
 - designated as a State Archeological Landmark;
 - determined by the Texas Historical Commission to qualify as eligible for inclusion on the National Register of Historic Places or for designation as a Recorded Texas Historic Landmark or as a state Archeological Landmark;
 - certified by the Texas Historical Commission to other state agencies as worthy of preservation;

- designated as historic by an ordinance of a municipality with a population of more than 1.5 million; or
- designated historic by a political subdivision of the state, the state, or the federal government.

DIGEST: HB 690 would add historic structures or properties as defined in Local Government Code, sec. 315.006 to the list of places for which graffiti was punishable as a state jail felony if damage caused was less than \$20,000.

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

**SUPPORTERS
SAY:**

HB 690 would punish individuals for defacing historic structures with graffiti the same way that we punish individuals for marking other sacred structures. The law already recognizes that certain places, such as places of worship and public monuments, are sacred and that damage cannot be measured and should not be punished based merely on the dollar amount of damage caused. This change would not be a penalty enhancement for graffiti crimes, but rather would add historic structures to a law that should have included them to begin with.

Valuation of the damage caused to historic structures is difficult to quantify, as the materials that were used a hundred years ago are part of the historic value and, once damaged, are difficult to replace. For example, recent graffiti damage to a mission in San Antonio, which was of porous limestone and sandstone construction, had to be carefully cleaned by a conservator to prevent permanent altering of the structure.

Grffiti has huge public costs. An estimated \$12 billion a year is spent in the United States on clean-up costs. Graffiti also contributes to lost revenue from declines in property value, and it heightens fear of gang activity.

**OPPONENTS
SAY:**

HB 690 would continue the ineffective practice of enhancing penalties for graffiti — ineffective because so few perpetrators are caught and convicted that penalty enhancements do not serve as a deterrent. Moreover, if graffiti offenders were caught, increasing the penalty would result in increased demand on state jails. This would not be an efficient use of state corrections resources as these people are not dangerous

enough to warrant lock-up. A graffiti offender could spend 180 days to

two years in a state jail. Community supervision is the better and more cost-effective solution to trying to rehabilitate these offenders.

OTHER
OPPONENTS
SAY:

While making graffiti damage to an historic structure a state jail felony regardless of the value of the damage would be a worthy change, an historic structure should be defined more narrowly. HB 690 could allow any city to declare its whole downtown “historic” and would dilute the protections we are trying to afford only to our most sacred structures.

NOTES:

The author plans to offer a floor substitute that still would make graffiti on historic structures or properties a state jail felony as in the original bill, but would include a specific definition of an historic structure or property rather than referencing the Local Government Code. An historic structure would be a structure that was publicly owned and included on the National Register of Historic Places, was designated as a Recorded Texas Historic Landmark, or was designated as a State Archeological Landmark.