

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1633
By: Walle et al. (Ellis)
Criminal Justice
5/22/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a juvenile convicted of a Class A misdemeanor or a Class B misdemeanor graffiti offense is required to restore the damaged property by removing or painting over any markings made. In addition to restoring the property, judges frequently require the juvenile to complete community service.

This legislation establishes the minimum amount of community service to be completed as a result of Class A and Class B misdemeanor juvenile graffiti offenses. While it is already required that juveniles restore the property, this bill requires offenders to go above and beyond to improve the community they once desired to deface.

C.S.H.B. 1633 relates to the prosecution and punishment of the offense of graffiti and to certain conditions imposed on defendants convicted of that offense or on juveniles adjudicated as having engaged in conduct in violation of that offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.037(s), Code of Criminal Procedure, as follows:

(s)(1) Requires a court to order a defendant convicted of an offense under Section 28.08 (Graffiti), Penal Code, to make restitution by reimbursing the owner of the property for the cost of restoring the property or with the consent of the owner of the property, personally restoring the property by removing or painting over any markings the defendant made. Deletes existing text authorizing a court, if the court orders a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to the victim of the offense, to order the defendant to make restitution as provided by Subsection (b)(1)(B) (relating to authorizing the court, if the offense results in damage to or loss or destruction of property of a victim of the offense, to order the defendant to pay a certain amount if return of the property is impossible or impractical or is an inadequate remedy) or by personally restoring the property by removing or painting over any markings the defendant made.

(2) Requires a court to order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to a political subdivision that owns public property or erects a street sign or official traffic-control device on which the defendant makes markings in violation of Section 28.08, Penal Code, by paying an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device, or with the consent of the political subdivision, restoring the public property, street sign, or official traffic-control device by removing or painting over any markings made by the defendant on the property, sign, or device. Deletes existing text requiring that the amount of the restitution ordered be equal to the lesser of the amount of restitution authorized by Subsection (b)(1)(B) or the cost to the political subdivision of restoring the public property, street sign, or official traffic-control device.

(3) Creates this subdivision from existing text. Deletes existing text authorizing the court, if the court orders a defendant to make restitution under this subdivision and the defendant is financially unable to make the restitution, to order the defendant to perform a specific number of hours of community service, including service restoring the property by removing or painting over any markings the defendant made, to satisfy the restitution. Makes a nonsubstantive change.

(4) Requires the court, notwithstanding Subsection (g)(4) (relating to requiring the order of restitution to require the defendant to make restitution directly to the victim or other person eligible for restitution under this article), to direct a defendant ordered to make restitution under this subsection as a condition of community supervision to deliver the amount or property due as restitution to the defendant's supervising officer for transfer to the owner. Requires a parole panel to direct a defendant ordered to make restitution under this subsection as a condition of parole or mandatory supervision to deliver the amount or property due as restitution to the defendant's supervising officer. Requires the defendant's supervising officer to notify the court when the defendant has delivered the full amount of restitution ordered.

(5) Creates this subdivision from existing text. Makes a nonsubstantive change.

SECTION 2. Amends Section 11, Article 42.12, Code of Criminal Procedure, by adding Subsection (k), to require a court granting community supervision to a defendant convicted of an offense under Section 28.08, Penal Code, to require as a condition of community supervision that the defendant perform at least 15 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$50 or more but less than \$500 or at least 30 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$500 or more.

SECTION 3. Amends Section 54.046, Family Code, by amending Subsections (a) and (c) and adding Subsections (d) and (e), as follows:

(a) Requires a juvenile court, rather than authorizes a juvenile court, if the court places on probation under Section 54.04(d) (relating to allowing the court to make a certain disposition in the case if the court or jury makes the finding specified in Subsection (c)) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, to order the child to reimburse the owner of the property for the cost of restoring the property or with consent of the owner of the property, restore the property by removing or painting over any markings made by the child on the property; and if the child made markings on public property, a street sign, or an official traffic-control device in violation of Section 28.08, Penal Code, to order the child to make to the political subdivision that owns the public property or erected the street sign or official traffic-control device restitution in an amount equal to the lesser of the cost to the political subdivision of replacing or restoring the public property, street sign, or official traffic-control device, or with the consent of the political subdivision, restore the public property, street sign, or official traffic-control device by removing or painting over any markings made by the child on the property, sign, or device.

(c) Authorizes a juvenile court, if the court orders a child to make restitution under Subsection (a) and the child, child's parent, or other person responsible for the child's support is financially unable to make the restitution, to order the child to perform a specific number of hours of community service, in addition to the hours required under Subsection (d), to satisfy the restitution.

(d) Requires a juvenile court, if the court places on probation under Section 54.04(d) a child adjudicated as having engaged in conduct in violation of Section 28.08, Penal Code, in addition to other conditions of probation, to order the child to perform at least 15 hours of community service if the amount of pecuniary loss resulting from the conduct is \$50 or more but less than \$500 or at least 30 hours of community service if the amount of pecuniary loss resulting from the conduct is \$500 or more.

(e) Requires the juvenile court to direct a child ordered to make restitution under this section to deliver the amount or property due as restitution to a juvenile probation department for transfer to the owner. Requires the juvenile probation department to notify the juvenile court when the child has delivered the full amount of restitution ordered.

SECTION 4. Amends Sections 28.08(a), Penal Code, to provide that a person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with paint, rather than with aerosol paint, an indelible marker, or an etching or engraving device.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2009.