

By: Ortiz, Jr.

H.B. No. 385

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and consequences of certain offenses involving graffiti; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 28, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

1 (i) any felony under Chapter 481, Health  
2 and Safety Code (Texas Controlled Substances Act);

3 (ii) any felony under Chapter 483, Health  
4 and Safety Code;

5 (iii) a felony under Chapter 153, Finance  
6 Code;

7 (iv) any felony under Chapter 34, Penal  
8 Code;

9 (v) a Class A misdemeanor under Subchapter  
10 B, Chapter 365, Health and Safety Code, if the defendant has been  
11 previously convicted twice of an offense under that subchapter;

12 (vi) any felony under Chapter 152, Finance  
13 Code;

14 (vii) any felony under Chapter 32, Human  
15 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
16 involves the state Medicaid program;

17 (viii) a Class B misdemeanor under Chapter  
18 522, Business & Commerce Code; or

19 (ix) a Class A misdemeanor under Section  
20 35.153, Business & Commerce Code;

21 (C) the proceeds gained from the commission of a  
22 felony listed in Paragraph (A) or (B) of this subdivision, a  
23 misdemeanor listed in Paragraph (B)(viii) of this subdivision, or a  
24 crime of violence;

25 (D) acquired with proceeds gained from the  
26 commission of a felony listed in Paragraph (A) or (B) of this  
27 subdivision, a misdemeanor listed in Paragraph (B)(viii) of this

1 subdivision, or a crime of violence; ~~[or]~~

2 (E) used to facilitate or intended to be used to  
3 facilitate the commission of a felony under Section 15.031 or  
4 43.25, Penal Code; or

5 (F) used by a defendant charged with or convicted  
6 of a felony under Section 28.08, Penal Code, to advertise, promote,  
7 or publish the commission of that felony.

8 SECTION 2. Section 28.08(a), Penal Code, is amended to read  
9 as follows:

10 (a) A person commits an offense if, without the effective  
11 consent of the owner, the person intentionally or knowingly makes  
12 markings, including inscriptions, slogans, drawings, or paintings,  
13 on the tangible property of the owner with:

- 14 (1) ~~[aerosol]~~ paint;
- 15 (2) an indelible marker; or
- 16 (3) an etching or engraving device.

17 SECTION 3. Section 71.02(a), Penal Code, is amended to read  
18 as follows:

19 (a) A person commits an offense if, with the intent to  
20 establish, maintain, or participate in a combination or in the  
21 profits of a combination or as a member of a criminal street gang,  
22 the person ~~[he]~~ commits or conspires to commit one or more of the  
23 following:

- 24 (1) murder, capital murder, arson, aggravated  
25 robbery, robbery, burglary, theft, aggravated kidnapping,  
26 kidnapping, aggravated assault, aggravated sexual assault, sexual  
27 assault, forgery, deadly conduct, assault punishable as a Class A

1 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
2 motor vehicle;

3 (2) any gambling offense punishable as a Class A  
4 misdemeanor;

5 (3) promotion of prostitution, aggravated promotion  
6 of prostitution, or compelling prostitution;

7 (4) unlawful manufacture, transportation, repair, or  
8 sale of firearms or prohibited weapons;

9 (5) unlawful manufacture, delivery, dispensation, or  
10 distribution of a controlled substance or dangerous drug, or  
11 unlawful possession of a controlled substance or dangerous drug  
12 through forgery, fraud, misrepresentation, or deception;

13 (6) any unlawful wholesale promotion or possession of  
14 any obscene material or obscene device with the intent to wholesale  
15 promote the same;

16 (7) any offense under Subchapter B, Chapter 43,  
17 depicting or involving conduct by or directed toward a child  
18 younger than 18 years of age;

19 (8) any felony offense under Chapter 28 or 32;

20 (9) any offense under Chapter 36;

21 (10) any offense under Chapter 34 or 35;

22 (11) any offense under Section 37.11(a);

23 (12) any offense under Chapter 20A; or

24 (13) any offense under Section 37.10.

25 SECTION 4. Section 28.08(e)(1), Penal Code, is repealed.

26 SECTION 5. The change in law made by this Act applies only  
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is  
2 covered by the law in effect when the offense was committed, and the  
3 former law is continued in effect for that purpose. For purposes of  
4 this section, an offense was committed before the effective date of  
5 this Act if any element of the offense was committed before that  
6 date.

7 SECTION 6. This Act takes effect September 1, 2009.