

By: Walle, Martinez Fischer, Moody,  
Ortiz, Jr., Leibowitz, et al.

H.B. No. 1633

Substitute the following for H.B. No. 1633:

By: Moody

C.S.H.B. No. 1633

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution and punishment of the offense of  
3 graffiti and to certain conditions imposed on defendants convicted  
4 of that offense or on juveniles adjudicated as having engaged in  
5 conduct in violation of that offense.

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

7 SECTION 1. Article 42.037(s), Code of Criminal Procedure,  
8 is amended to read as follows:

9 (s)(1) A court shall order [~~If a court orders~~] a defendant  
10 convicted of an offense under Section 28.08, Penal Code, to make  
11 restitution by:

12 (A) reimbursing the owner of the property for the  
13 cost of restoring the property; or

14 (B) with the consent of the owner of the  
15 property, [~~to the victim of the offense, the court may order the~~  
16 ~~defendant to make restitution as provided by Subsection (b)(1)(B)~~  
17 ~~or by~~] personally restoring the property by removing or painting  
18 over any markings the defendant made.

19 (2) A court shall order a defendant convicted of an  
20 offense under Section 28.08, Penal Code, to make restitution to a  
21 political subdivision that owns public property or erects a street  
22 sign or official traffic-control device on which the defendant  
23 makes markings in violation of Section 28.08, Penal Code, by:

24 (A) paying an [~~The~~] amount [~~of the restitution~~

1 ~~ordered must be~~] equal to the lesser of [~~the amount of restitution~~  
2 ~~authorized by Subsection (b)(1)(B) or~~] the cost to the political  
3 subdivision of replacing or restoring the public property, street  
4 sign, or official traffic-control device; or

5 (B) with the consent of the political  
6 subdivision, restoring the public property, street sign, or  
7 official traffic-control device by removing or painting over any  
8 markings made by the defendant on the property, sign, or device.

9 (3) If the court orders a defendant to make  
10 restitution under this subsection [~~subdivision~~] and the defendant  
11 is financially unable to make the restitution, the court may order  
12 the defendant to perform a specific number of hours of community  
13 service[~~, including service restoring the property by removing or~~  
14 ~~painting over any markings the defendant made,~~] to satisfy the  
15 restitution.

16 (4) Notwithstanding Subsection (g)(4), a court shall  
17 direct a defendant ordered to make restitution under this  
18 subsection as a condition of community supervision to deliver the  
19 amount or property due as restitution to the defendant's  
20 supervising officer for transfer to the owner. A parole panel shall  
21 direct a defendant ordered to make restitution under this  
22 subsection as a condition of parole or mandatory supervision to  
23 deliver the amount or property due as restitution to the  
24 defendant's supervising officer. The defendant's supervising  
25 officer shall notify the court when the defendant has delivered the  
26 full amount of restitution ordered.

27 (5) For purposes of this subsection [~~subdivision~~],

1 "official traffic-control device" has the meaning assigned by  
2 Section 541.304, Transportation Code.

3 SECTION 2. Section 11, Article 42.12, Code of Criminal  
4 Procedure, is amended by adding Subsection (k) to read as follows:

5 (k) A court granting community supervision to a defendant  
6 convicted of an offense under Section 28.08, Penal Code, shall  
7 require as a condition of community supervision that the defendant  
8 perform:

9 (1) at least 15 hours of community service if the  
10 amount of pecuniary loss resulting from the commission of the  
11 offense is \$50 or more but less than \$500; or

12 (2) at least 30 hours of community service if the  
13 amount of pecuniary loss resulting from the commission of the  
14 offense is \$500 or more.

15 SECTION 3. Section 54.046, Family Code, is amended by  
16 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
17 to read as follows:

18 (a) If a juvenile court places on probation under Section  
19 54.04(d) a child adjudicated as having engaged in conduct in  
20 violation of Section 28.08, Penal Code, in addition to other  
21 conditions of probation, the court:

22 (1) shall ~~may~~ order the child to:

23 (A) reimburse the owner of the property for the  
24 cost of restoring the property; or

25 (B) with consent of the owner of the property,  
26 restore the property by removing or painting over any markings made  
27 by the child on the property; and

1           (2) if the child made markings on public property, a  
2 street sign, or an official traffic-control device in violation of  
3 Section 28.08, Penal Code, shall [~~may~~] order the child to:

4           (A) make to the political subdivision that owns  
5 the public property or erected the street sign or official  
6 traffic-control device restitution in an amount equal to the lesser  
7 of the cost to the political subdivision of replacing or restoring  
8 the public property, street sign, or official traffic-control  
9 device; or

10           (B) with the consent of the political  
11 subdivision, restore the public property, street sign, or official  
12 traffic-control device by removing or painting over any markings  
13 made by the child on the property, sign, or device.

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

20           (d) If a juvenile court places on probation under Section  
21 54.04(d) a child adjudicated as having engaged in conduct in  
22 violation of Section 28.08, Penal Code, in addition to other  
23 conditions of probation, the court shall order the child to  
24 perform:

25           (1) at least 15 hours of community service if the  
26 amount of pecuniary loss resulting from the conduct is \$50 or more  
27 but less than \$500; or

1           (2) at least 30 hours of community service if the  
2 amount of pecuniary loss resulting from the conduct is \$500 or more.

3           (e) The juvenile court shall direct a child ordered to make  
4 restitution under this section to deliver the amount or property  
5 due as restitution to a juvenile probation department for transfer  
6 to the owner. The juvenile probation department shall notify the  
7 juvenile court when the child has delivered the full amount of  
8 restitution ordered.

9           SECTION 4. Sections 28.08(a) and (d), Penal Code, are  
10 amended to read as follows:

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

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

18           (d) An offense under this section is a state jail felony if:

19           (1) either:

20                   (A) the marking is made on a school, an  
21 institution of higher education, a place of worship or human  
22 burial, a public monument, or a community center that provides  
23 medical, social, or educational programs; or

24                   (B) the person has been previously convicted two  
25 or more times of an offense under this section; and

26           (2) the amount of the pecuniary loss to real property  
27 or to tangible personal property is any amount less than \$20,000.

1           SECTION 5. The change in law made by this Act applies only  
2 to an offense that is committed or conduct that occurs on or after  
3 the effective date of this Act. An offense that is committed or  
4 conduct that occurs before the effective date of this Act is covered  
5 by the law in effect when the offense was committed or the conduct  
6 occurred, and the former law is continued in effect for that  
7 purpose. For purposes of this section, an offense was committed or  
8 conduct occurred before the effective date of this Act if any  
9 element of the offense or conduct occurred before that date.

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