

1-1 By: Walle, et al. (Senate Sponsor - Ellis) H.B. No. 1633  
1-2 (In the Senate - Received from the House April 27, 2009;  
1-3 May 1, 2009, read first time and referred to Committee on Criminal  
1-4 Justice; May 23, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1633 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the prosecution and punishment of the offense of  
1-11 graffiti and to certain conditions imposed on defendants convicted  
1-12 of that offense or on juveniles adjudicated as having engaged in  
1-13 conduct in violation of that offense.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Article 42.037(s), Code of Criminal Procedure,  
1-16 is amended to read as follows:

1-17 (s)(1) A court shall order [~~If a court orders~~] a defendant  
1-18 convicted of an offense under Section 28.08, Penal Code, to make  
1-19 restitution by:

1-20 (A) reimbursing the owner of the property for the  
1-21 cost of restoring the property; or

1-22 (B) with the consent of the owner of the  
1-23 property, [to the victim of the offense, the court may order the  
1-24 defendant to make restitution as provided by Subsection (b)(1)(B)  
1-25 or by] personally restoring the property by removing or painting  
1-26 over any markings the defendant made.

1-27 (2) A court shall order a defendant convicted of an  
1-28 offense under Section 28.08, Penal Code, to make restitution to a  
1-29 political subdivision that owns public property or erects a street  
1-30 sign or official traffic-control device on which the defendant  
1-31 makes markings in violation of Section 28.08, Penal Code, by:

1-32 (A) paying an [The] amount [of the restitution  
1-33 ordered must be] equal to the lesser of [the amount of restitution  
1-34 authorized by Subsection (b)(1)(B) or] the cost to the political  
1-35 subdivision of replacing or restoring the public property, street  
1-36 sign, or official traffic-control device; or

1-37 (B) with the consent of the political  
1-38 subdivision, restoring the public property, street sign, or  
1-39 official traffic-control device by removing or painting over any  
1-40 markings made by the defendant on the property, sign, or device.

1-41 (3) If the court orders a defendant to make  
1-42 restitution under this subsection [~~subdivision~~] and the defendant  
1-43 is financially unable to make the restitution, the court may order  
1-44 the defendant to perform a specific number of hours of community  
1-45 service[, including service restoring the property by removing or  
1-46 painting over any markings the defendant made,] to satisfy the  
1-47 restitution.

1-48 (4) Notwithstanding Subsection (g)(4), a court shall  
1-49 direct a defendant ordered to make restitution under this  
1-50 subsection as a condition of community supervision to deliver the  
1-51 amount or property due as restitution to the defendant's  
1-52 supervising officer for transfer to the owner. A parole panel shall  
1-53 direct a defendant ordered to make restitution under this  
1-54 subsection as a condition of parole or mandatory supervision to  
1-55 deliver the amount or property due as restitution to the  
1-56 defendant's supervising officer. The defendant's supervising  
1-57 officer shall notify the court when the defendant has delivered the  
1-58 full amount of restitution ordered.

1-59 (5) For purposes of this subsection [~~subdivision~~],  
1-60 "official traffic-control device" has the meaning assigned by  
1-61 Section 541.304, Transportation Code.

1-62 SECTION 2. Section 11, Article 42.12, Code of Criminal  
1-63 Procedure, is amended by adding Subsection (k) to read as follows:

2-1 (k) A court granting community supervision to a defendant  
2-2 convicted of an offense under Section 28.08, Penal Code, shall  
2-3 require as a condition of community supervision that the defendant  
2-4 perform:

2-5 (1) at least 15 hours of community service if the  
2-6 amount of pecuniary loss resulting from the commission of the  
2-7 offense is \$50 or more but less than \$500; or

2-8 (2) at least 30 hours of community service if the  
2-9 amount of pecuniary loss resulting from the commission of the  
2-10 offense is \$500 or more.

2-11 SECTION 3. Section 54.046, Family Code, is amended by  
2-12 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
2-13 to read as follows:

2-14 (a) If a juvenile court places on probation under Section  
2-15 54.04(d) a child adjudicated as having engaged in conduct in  
2-16 violation of Section 28.08, Penal Code, in addition to other  
2-17 conditions of probation, the court:

2-18 (1) shall ~~may~~ order the child to:

2-19 (A) reimburse the owner of the property for the  
2-20 cost of restoring the property; or

2-21 (B) with consent of the owner of the property,  
2-22 restore the property by removing or painting over any markings made  
2-23 by the child on the property; and

2-24 (2) if the child made markings on public property, a  
2-25 street sign, or an official traffic-control device in violation of  
2-26 Section 28.08, Penal Code, shall ~~may~~ order the child to:

2-27 (A) make to the political subdivision that owns  
2-28 the public property or erected the street sign or official  
2-29 traffic-control device restitution in an amount equal to the lesser  
2-30 of the cost to the political subdivision of replacing or restoring  
2-31 the public property, street sign, or official traffic-control  
2-32 device; or

2-33 (B) with the consent of the political  
2-34 subdivision, restore the public property, street sign, or official  
2-35 traffic-control device by removing or painting over any markings  
2-36 made by the child on the property, sign, or device.

2-37 (c) If a juvenile court orders a child to make restitution  
2-38 under Subsection (a) and the child, child's parent, or other person  
2-39 responsible for the child's support is financially unable to make  
2-40 the restitution, the court may order the child to perform a specific  
2-41 number of hours of community service, in addition to the hours  
2-42 required under Subsection (d), to satisfy the restitution.

2-43 (d) If a juvenile court places on probation under Section  
2-44 54.04(d) a child adjudicated as having engaged in conduct in  
2-45 violation of Section 28.08, Penal Code, in addition to other  
2-46 conditions of probation, the court shall order the child to  
2-47 perform:

2-48 (1) at least 15 hours of community service if the  
2-49 amount of pecuniary loss resulting from the conduct is \$50 or more  
2-50 but less than \$500; or

2-51 (2) at least 30 hours of community service if the  
2-52 amount of pecuniary loss resulting from the conduct is \$500 or more.

2-53 (e) The juvenile court shall direct a child ordered to make  
2-54 restitution under this section to deliver the amount or property  
2-55 due as restitution to a juvenile probation department for transfer  
2-56 to the owner. The juvenile probation department shall notify the  
2-57 juvenile court when the child has delivered the full amount of  
2-58 restitution ordered.

2-59 SECTION 4. Section 28.08(a), Penal Code, is amended to read  
2-60 as follows:

2-61 (a) A person commits an offense if, without the effective  
2-62 consent of the owner, the person intentionally or knowingly makes  
2-63 markings, including inscriptions, slogans, drawings, or paintings,  
2-64 on the tangible property of the owner with:

2-65 (1) ~~aerosol~~ paint;

2-66 (2) an indelible marker; or

2-67 (3) an etching or engraving device.

2-68 SECTION 5. The change in law made by this Act applies only  
2-69 to an offense that is committed or conduct that occurs on or after

3-1 the effective date of this Act. An offense that is committed or  
3-2 conduct that occurs before the effective date of this Act is covered  
3-3 by the law in effect when the offense was committed or the conduct  
3-4 occurred, and the former law is continued in effect for that  
3-5 purpose. For purposes of this section, an offense was committed or  
3-6 conduct occurred before the effective date of this Act if any  
3-7 element of the offense or conduct occurred before that date.

3-8 SECTION 6. This Act takes effect September 1, 2009.

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