

By: Moody

H.B. No. 4164

A BILL TO BE ENTITLED

AN ACT

relating to the conduct constituting the offense of graffiti, the creation and criminal prosecution of, and penalties for offenses involving graffiti, and the authority of certain governmental entities to take certain actions designed to prevent or eradicate graffiti.

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

SECTION 1. Section 28.08(a), (c), and (d), Penal Code, are amended to read as follows:

(a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly:

(1) makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

(A) ~~[(1)]~~ aerosol paint;

(B) ~~[(2)]~~ an indelible marker; or

(C) ~~[(3)]~~ an etching or engraving device; or

(2) affixes a sticker to the tangible property of the owner in a manner that causes damage to the property.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of Subsection (a)(1) ~~[this section]~~ pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the

1 offense.

2 (d) An offense under Subsection (a)(1) ~~[this section]~~ is a
3 state jail felony if:

4 (1) the marking is made on a school, an institution of
5 higher education, a place of worship or human burial, a public
6 monument, or a community center that provides medical, social, or
7 educational programs; and

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

10 SECTION 2. Chapter 30, Penal Code, is amended by adding
11 Section 30.021 to read as follows:

12 Sec. 30.021. BURGLARY OF BUILDING TO CREATE GRAFFITI. (a) A
13 person commits an offense if, without the effective consent of the
14 owner, the person:

15 (1) enters a building (or any portion of a building)
16 not then open to the public, with the intent to commit an offense
17 under Section 28.08;

18 (2) remains concealed, with the intent to commit an
19 offense under Section 28.08, in a building; or

20 (3) enters a building and commits or attempts to
21 commit an offense under Section 28.08.

22 (b) For purposes of this section, "enter" has the meaning
23 assigned by Section 30.02.

24 (c) An offense under this section is a state jail felony.

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

27 (a) A person commits an offense if, with the intent to

1 establish, maintain, or participate in a combination or in the
2 profits of a combination or as a member of a criminal street gang,
3 he commits or conspires to commit one or more of the following:

4 (1) murder, capital murder, arson, aggravated
5 robbery, robbery, burglary, theft, aggravated kidnapping,
6 kidnapping, aggravated assault, aggravated sexual assault, sexual
7 assault, forgery, deadly conduct, assault punishable as a Class A
8 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
9 motor vehicle;

10 (2) any gambling offense punishable as a Class A
11 misdemeanor;

12 (3) promotion of prostitution, aggravated promotion
13 of prostitution, or compelling prostitution;

14 (4) unlawful manufacture, transportation, repair, or
15 sale of firearms or prohibited weapons;

16 (5) unlawful manufacture, delivery, dispensation, or
17 distribution of a controlled substance or dangerous drug, or
18 unlawful possession of a controlled substance or dangerous drug
19 through forgery, fraud, misrepresentation, or deception;

20 (6) any unlawful wholesale promotion or possession of
21 any obscene material or obscene device with the intent to wholesale
22 promote the same;

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

26 (8) any felony offense under Chapter 32;

27 (9) any offense under Chapter 36;

- (10) any offense under Chapter 34 or 35;
- (11) any offense under Section 37.11(a);
- (12) any offense under Chapter 20A; ~~[or]~~
- (13) any offense under Section 37.10; or
- (14) any offense under Section 28.08.

SECTION 4. Articles 102.0171(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a [~~\$50~~] juvenile delinquency prevention and graffiti eradication fee as a cost of court. The amount of the fee under this section must be not less than \$50 or more than \$500. In setting the amount of the fee, the court shall increase the fee based on the amount of pecuniary loss in the case and the number of times the defendant has been previously convicted under Section 28.08, Penal Code.

(c) The clerks of the respective courts shall collect the costs and pay them to the county treasurer or to any other official who discharges the duties commonly delegated to the county treasurer for deposit in a fund to be known as the county juvenile delinquency prevention fund. A fund designated by this subsection may be used only to:

(1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;

(2) provide educational and intervention programs and materials, including printed educational materials for distribution to primary and secondary school students, designed to

1 prevent individuals from committing offenses under Section 28.08,
2 Penal Code;

3 (3) provide to the public rewards for identifying and
4 aiding in the apprehension and prosecution of offenders who commit
5 offenses under Section 28.08, Penal Code;

6 (4) provide funding for teen recognition and teen
7 recreation programs;

8 (5) provide funding for local teen court programs;

9 (6) provide funding for the local juvenile probation
10 department; ~~and~~

11 (7) provide educational and intervention programs
12 designed to prevent juveniles from engaging in delinquent conduct;
13 and

14 (8) provide funding for community art programs.

15 SECTION 5. Subchapter C, Chapter 101, Civil Practice and
16 Remedies Code, is amended by adding Section 101.067 to read as
17 follows:

18 Sec. 101.067. GRAFFITI REMOVAL. This chapter does not
19 apply to a claim for property damage caused by the removal of
20 graffiti under Section 250.007, Local Government Code.

21 SECTION 6. Section 54.0461(a), Family Code, is amended to
22 read as follows:

23 (a) If a child is adjudicated as having engaged in
24 delinquent conduct that violates Section 28.08, Penal Code, the
25 juvenile court shall order the child, parent, or other person
26 responsible for the child's support to pay to the court a [~~\$50~~]
27 juvenile delinquency prevention fee as a cost of court. The amount

1 of the fee under this section must be not less than \$50 or more than
2 \$500. In setting the amount of the fee, the court shall increase
3 the fee based on the amount of pecuniary loss resulting from the
4 conduct and the number of times the child has been previously
5 adjudicated as having engaged in delinquent conduct violating
6 Section 28.08, Penal Code.

7 SECTION 7. Section 102.041, Government Code, as amended by
8 Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular
9 Session, 2007, is amended to read as follows:

10 Sec. 102.041. ADDITIONAL COURT COSTS ON CONVICTION IN
11 DISTRICT COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a
12 district court shall collect fees and costs under the Code of
13 Criminal Procedure on conviction of a defendant as follows:

14 (1) a jury fee (Art. 102.004, Code of Criminal
15 Procedure) . . . \$20;

16 (2) a fee for clerk of the court services (Art.
17 102.005, Code of Criminal Procedure) . . . \$40;

18 (3) a records management and preservation services fee
19 (Art. 102.005, Code of Criminal Procedure) . . . \$25;

20 (4) a security fee on a felony offense (Art. 102.017,
21 Code of Criminal Procedure) . . . \$5;

22 (5) a security fee on a misdemeanor offense (Art.
23 102.017, Code of Criminal Procedure) . . . \$3; and

24 (6) a juvenile delinquency prevention and graffiti
25 eradication fee (Art. 102.0171, Code of Criminal Procedure) . . .
26 not less than \$50 or more than \$500 [~~\$5~~].

27 SECTION 8. Section 102.061, Government Code, as amended by

Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal Procedure) . . . \$20;

(2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . not less than \$50 or more than \$500 [~~\$5~~]; and

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5.

SECTION 9. Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

(1) a jury fee (Art. 102.004, Code of Criminal

Procedure) . . . \$20;

(2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) . . . \$40;

(3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) . . . \$25;

(4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) . . . \$3;

(5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) . . . not less than \$50 or more than \$500 [~~\$5~~]; and

(6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) . . . not to exceed \$5.

SECTION 10. Section 103.0212, Government Code, is amended to read as follows:

Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Family Code if ordered by the court or otherwise required:

(1) in family matters:

(A) issuing writ of withholding (Sec. 8.262, Family Code) . . . \$15;

(B) filing copy of writ of withholding to subsequent employer (Sec. 8.267, Family Code) . . . \$15;

(C) issuing and delivering modified writ of withholding or notice of termination (Sec. 8.302, Family Code) . . . \$15;

(D) issuing and delivering notice of termination

1 of withholding (Sec. 8.303, Family Code) . . . \$15;
2 (E) issuance of change of name certificate (Sec.
3 45.106, Family Code) . . . \$10;
4 (F) protective order fee (Sec. 81.003, Family
5 Code) . . . \$16;
6 (G) filing suit requesting adoption of child
7 (Sec. 108.006, Family Code) . . . \$15;
8 (H) filing fees for suits affecting parent-child
9 relationship (Sec. 110.002, Family Code):
10 (i) suit or motion for modification (Sec.
11 110.002, Family Code) . . . \$15;
12 (ii) motion for enforcement (Sec. 110.002,
13 Family Code) . . . \$15;
14 (iii) notice of application for judicial
15 writ of withholding (Sec. 110.002, Family Code) . . . \$15;
16 (iv) motion to transfer (Sec. 110.002,
17 Family Code) . . . \$15;
18 (v) petition for license suspension (Sec.
19 110.002, Family Code) . . . \$15;
20 (vi) motion to revoke a stay of license
21 suspension (Sec. 110.002, Family Code) . . . \$15; and
22 (vii) motion for contempt (Sec. 110.002,
23 Family Code) . . . \$15;
24 (I) order or writ of income withholding to be
25 delivered to employer (Sec. 110.004, Family Code) . . . not to
26 exceed \$15;
27 (J) filing fee for transferred case (Sec.

1 110.005, Family Code) . . . \$45;

2 (K) filing a writ of withholding (Sec. 158.319,
3 Family Code) . . . \$15;

4 (L) filing a request for modified writ of
5 withholding or notice of termination (Sec. 158.403, Family Code)
6 . . . not to exceed \$15;

7 (M) filing an administrative writ to employer
8 (Sec. 158.503, Family Code) . . . not to exceed \$15; and

9 (N) genetic testing fees in relation to a child
10 born to a gestational mother (Sec. 160.762, Family Code) . . . as
11 assessed by the court; and

12 (2) in juvenile court:

13 (A) fee schedule for deferred prosecution
14 services (Sec. 53.03, Family Code) . . . maximum fee of \$15 a month;

15 (B) a teen court administration fee (Sec. 54.032,
16 Family Code) . . . not to exceed \$10;

17 (C) court costs for juvenile probation diversion
18 fund (Sec. 54.0411, Family Code) . . . \$20;

19 (D) a juvenile delinquency prevention fee (Sec.
20 54.0461, Family Code) . . . not less than \$50 or more than \$500
21 [~~\$5~~]; and

22 (E) a court fee for child's probationary period
23 (Sec. 54.061, Family Code) . . . not to exceed \$15 a month.

24 SECTION 11. Section 485.018(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) A political subdivision or an agency of this state may
27 not enact an ordinance or rule that requires a business

1 establishment to display an abusable volatile chemical, other than
2 aerosol paint, in a manner that makes the chemical accessible to
3 patrons of the business only with the assistance of personnel of the
4 business.

5 SECTION 12. Chapter 250, Local Government Code, is amended
6 by adding Sections 250.006 and 250.007 to read as follows:

7 Sec. 250.006. REGULATION OF SALE OF AEROSOL PAINT;
8 SURCHARGE. (a) A county by order or a municipality by ordinance
9 may require a person who sells aerosol paint to:

10 (1) require proof of identification from the buyer
11 before making a sale to that buyer; and

12 (2) record the sale in a log and maintain the log for
13 at least two years after the date of the sale.

14 (b) An order adopted by a county under this section applies
15 only in the unincorporated area of the county.

16 (c) An order or ordinance adopted under this section may
17 require a surcharge not to exceed one dollar on each sale. Money
18 collected under this section may be used only for purposes related
19 to graffiti abatement.

20 Sec. 250.007. GRAFFITI REMOVAL. (a) A county or
21 municipality may require an owner of property within the
22 jurisdiction of the county or municipality to remove graffiti from
23 the owner's property.

24 (b) A requirement adopted under this section shall provide
25 that if an owner of property fails to remove graffiti not later than
26 the seventh day after the date of notice, the county or municipality
27 may:

1 (1) perform the work necessary to remove the graffiti;
2 or
3 (2) pay for the removal of the graffiti and charge the
4 expense to the owner of the property.

5 (c) The notice required by Subsection (b) must be given:

6 (1) personally to the owner in writing;
7 (2) by letter sent by certified mail, addressed to the
8 owner at the owner's address as contained in the records of the
9 appraisal district in which the property is located; or

10 (3) if service cannot be obtained under Subdivision
11 (1) or (2):

12 (A) by publication at least once;
13 (B) by posting the notice on or near the front
14 door of each building on the property to which the notice relates;
15 or

16 (C) by posting the notice on a placard attached
17 to a stake driven into the ground on the property to which the
18 notice relates.

19 (d) The county or municipality may assess expenses incurred
20 under Subsection (b) against the property on which the work is done
21 to remove the graffiti.

22 (e) To obtain a lien against the property for expenses
23 incurred under Subsection (b), the governing body of the county or
24 municipality must file a statement of expenses with the county
25 clerk. The statement must state the name of the owner, if known,
26 and the legal description of the property. The lien attaches on the
27 filing of the statement with the county clerk.

1 SECTION 13. The changes in law made by this Act apply only
2 to an offense committed on or after the effective date of this Act.
3 An offense committed before the effective date of this Act is
4 covered by the law in effect when the offense was committed, and the
5 former law is continued in effect for that purpose. For purposes of
6 this section, an offense was committed before the effective date of
7 this Act if any element of the offense was committed before that
8 date.

9 SECTION 14. This Act takes effect September 1, 2009.