

By: Carona

S.B. No. 1078

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the conduct constituting the offense of graffiti, the
3 consequences of engaging in that conduct, and the authority of
4 certain governmental entities to take certain actions designed to
5 eradicate graffiti.

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

7 SECTION 1. Section 28.08, Penal Code, is amended to read as
8 follows:

9 Sec. 28.08. GRAFFITI. (a) A person commits an offense if,
10 without the effective consent of the owner, the person
11 intentionally or knowingly defaces, makes markings [~~, including~~
12 ~~inscriptions, slogans, drawings, or paintings,~~] on, or otherwise
13 alters the appearance of the tangible property of the owner with:

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

18 (b) Except as provided by Subsections (d) and (d-1)
19 [~~Subsection (d)~~], an offense under this section is:

- 20 (1) a Class B misdemeanor if the amount of pecuniary
21 loss is less than \$500;
22 (2) a Class A misdemeanor if the amount of pecuniary
23 loss is \$500 or more but less than \$1,500;
24 (3) a state jail felony if the amount of pecuniary loss

1 is \$1,500 or more but less than \$20,000;

2 (4) a felony of the third degree if the amount of
3 pecuniary loss is \$20,000 or more but less than \$100,000;

4 (5) a felony of the second degree if the amount of
5 pecuniary loss is \$100,000 or more but less than \$200,000; or

6 (6) a felony of the first degree if the amount of
7 pecuniary loss is \$200,000 or more.

8 (c) When more than one item of tangible property, belonging
9 to one or more owners, is altered [~~marked~~] in violation of this
10 section pursuant to one scheme or continuing course of conduct, the
11 conduct may be considered as one offense, and the amounts of
12 pecuniary loss to property resulting from the alterations to
13 [~~marking of~~] the property may be aggregated in determining the
14 grade of the offense.

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

16 (1) the alteration [~~marking~~] is made on a school, an
17 institution of higher education, a place of worship or human
18 burial, a public monument, [~~or~~] a community center that provides
19 medical, social, or educational programs, railroad property,
20 property of the United States Postal Service, a street sign, or an
21 official traffic-control device; and

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

24 (d-1) If it is shown on the trial of an offense under this
25 section other than a felony of the first degree or a Class A
26 misdemeanor that the defendant has been previously convicted of an
27 offense under this section, the punishment for the offense is

1 increased to the punishment prescribed for the next highest
2 category of offense. If the offense is a Class A misdemeanor, the
3 minimum term of confinement for the offense is increased to 180
4 days.

5 (e) In this section:

6 (1) [~~"Aerosol paint"~~ means an aerosolized paint
7 ~~product.~~

8 [~~(2)~~] "Etching or engraving device" means a device
9 that makes a delineation or impression on tangible property,
10 regardless of the manufacturer's intended use for that device.

11 (2) [~~(3)~~] "Indelible marker" means a device that makes
12 a mark with a paint or ink product that is specifically formulated
13 to be more difficult to erase, wash out, or remove than ordinary
14 paint or ink products.

15 (3) [~~(4)~~] "Institution of higher education" has the
16 meaning assigned by Section 481.134, Health and Safety Code.

17 (4) "Marking" includes an inscription, a slogan, a
18 drawing, and a painting.

19 (5) "Official traffic-control device" has the meaning
20 assigned by Section 541.304, Transportation Code.

21 (6) "School" means a private or public elementary or
22 secondary school.

23 SECTION 2. Article 42.037(s), Code of Criminal Procedure,
24 is amended to read as follows:

25 (s)(1) If a court orders a defendant convicted of an offense
26 under Section 28.08, Penal Code, to make restitution to the victim
27 of the offense, the court may order the defendant to make

1 restitution as provided by Subsection (b)(1)(B) or by personally
2 restoring the property by removing or painting over any alterations
3 ~~[markings]~~ the defendant made to the property.

4 (2) A court shall order a defendant convicted of an
5 offense under Section 28.08, Penal Code, to make restitution to a
6 political subdivision that owns public property or erected ~~[erects]~~
7 a street sign or official traffic-control device that was altered
8 by ~~[on which]~~ the defendant ~~[makes markings]~~ in violation of
9 Section 28.08, Penal Code. The amount of the restitution ordered
10 must be equal to the lesser of the amount of restitution authorized
11 by Subsection (b)(1)(B) or the cost to the political subdivision of
12 restoring the public property, street sign, or official
13 traffic-control device. If the court orders a defendant to make
14 restitution under this subdivision and the defendant is financially
15 unable to make the restitution, the court may order the defendant to
16 perform a specific number of hours of community service, including
17 service restoring the property by removing or painting over any
18 alterations ~~[markings]~~ the defendant made to the property, to
19 satisfy the restitution. For purposes of this subdivision,
20 "official traffic-control device" has the meaning assigned by
21 Section 541.304, Transportation Code.

22 SECTION 3. Subchapter C, Chapter 101, Civil Practice and
23 Remedies Code, is amended by adding Section 101.067 to read as
24 follows:

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

1 SECTION 4. Section 53.03(h), Family Code, is amended to
2 read as follows:

3 (h) If the child is alleged to have engaged in delinquent
4 conduct or conduct indicating a need for supervision that violates
5 Section 28.08, Penal Code, deferred prosecution under this section
6 may include:

7 (1) voluntary attendance in a class with instruction
8 in self-responsibility and empathy for a victim of an offense
9 conducted by a local juvenile probation department, if the class is
10 available; and

11 (2) voluntary restoration of the property damaged by
12 the child by removing or painting over any alterations [~~markings~~]
13 made by the child to the property, if the owner of the property
14 consents to the restoration.

15 SECTION 5. Section 54.046(a), Family Code, is amended to
16 read as follows:

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

21 (1) may order the child to:

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

24 (B) with consent of the owner of the property,
25 restore the property by removing or painting over any alterations
26 [~~markings~~] made by the child to [~~on~~] the property; and

27 (2) if the child altered [~~made markings on~~] public

1 property, a street sign, or an official traffic-control device in
2 violation of Section 28.08, Penal Code, may order the child to:

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

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

13 SECTION 6. Section 54.0481(a), Family Code, as added by
14 Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular
15 Session, 2007, is amended to read as follows:

16 (a) A juvenile court, in a disposition hearing under Section
17 54.04 regarding a child who has been adjudicated to have engaged in
18 delinquent conduct that violates Section 28.08, Penal Code:

19 (1) may order the child or a parent or other person
20 responsible for the child's support to make restitution by:

21 (A) reimbursing the owner of the property for the
22 cost of restoring the property; or

23 (B) with the consent of the owner of the
24 property, personally restoring the property by removing or painting
25 over any alterations [~~markings~~] the child made to the property; and

26 (2) if the child altered [~~made markings on~~] public
27 property, a street sign, or an official traffic-control device in

1 violation of Section 28.08, Penal Code, may order the child or a
2 parent or other person responsible for the child's support to:

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

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

13 SECTION 7. Chapter 250, Local Government Code, is amended
14 by adding Section 250.007 to read as follows:

15 Sec. 250.007. GRAFFITI REMOVAL. (a) A county by order or a
16 municipality by ordinance may require the owner of property within
17 the jurisdiction of the county or municipality to remove graffiti
18 from the owner's property on receipt of notice from the county or
19 municipality.

20 (b) The order or ordinance must require a property owner to
21 remove the graffiti on or before the 30th day after the date the
22 property owner receives notice under Subsection (a), except that if
23 the property owner requests the county or municipality, as
24 applicable, to remove the graffiti or if the property owner fails to
25 remove the graffiti on or before the 30th day after the date of
26 receipt of the notice, the county or municipality may remove the
27 graffiti and charge the expenses of removal to the property owner in

1 accordance with a fee schedule adopted by the county or
2 municipality.

3 (c) The notice required by Subsection (a) must be given:

4 (1) personally to the owner in writing;

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

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

11 (A) by publication at least once in a newspaper
12 of general circulation in the county or municipality;

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
21 performed 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 property owner, if
26 known, and the legal description of the property. The lien attaches
27 on the filing of the statement with the county clerk.

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

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