

By: Ellis

S.B. No. 2218

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal penalties and civil consequences for defendants convicted of an offense of graffiti and for juveniles adjudicated as having engaged in conduct involving graffiti.

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

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

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

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

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

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

(A) paying an ~~[- The]~~ amount ~~[of the restitution ordered must be]~~ equal to the lesser of ~~[the amount of restitution~~

1 ~~authorized by Subsection (b)(1)(B) or~~ the cost to the political
2 subdivision of replacing or restoring the public property, street
3 sign, or official traffic-control device; or

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

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

15 (4) For purposes of this subsection [~~subdivision~~],
16 "official traffic-control device" has the meaning assigned by
17 Section 541.304, Transportation Code.

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

20 (k) A court granting community supervision to a defendant
21 convicted of an offense under Section 28.08, Penal Code, shall
22 require as a condition of community supervision that the defendant
23 perform not less than 50 hours of community service.

24 SECTION 3. Section 54.046(a), Family Code, is amended to
25 read as follows:

26 (a) If a juvenile court places on probation under Section
27 54.04(d) a child adjudicated as having engaged in conduct in

1 violation of Section 28.08, Penal Code, in addition to other
2 conditions of probation, the court:

3 (1) shall [~~may~~] order the child to:

4 (A) reimburse the owner of the property for the
5 cost of restoring the property; or

6 (B) with consent of the owner of the property,
7 restore the property by removing or painting over any markings made
8 by the child on the property; and

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

12 (A) make to the political subdivision that owns
13 the public property or erected the street sign or official
14 traffic-control device restitution in an amount equal to the lesser
15 of the cost to the political subdivision of replacing or restoring
16 the public property, street sign, or official traffic-control
17 device; or

18 (B) with the consent of the political
19 subdivision, restore the public property, street sign, or official
20 traffic-control device by removing or painting over any markings
21 made by the child on the property, sign, or device.

22 SECTION 4. Section 54.0481(a), Family Code, as added by
23 Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular
24 Session, 2007, is amended to read as follows:

25 (a) A juvenile court, in a disposition hearing under Section
26 54.04 regarding a child who has been adjudicated to have engaged in
27 delinquent conduct that violates Section 28.08, Penal Code:

1 (1) shall [~~may~~] order the child, and may order [~~or~~] a
2 parent or other person responsible for the child's support, to make
3 restitution by:

4 (A) reimbursing the owner of the property for the
5 cost of restoring the property; or

6 (B) with the consent of the owner of the
7 property, personally restoring the property by removing or painting
8 over any markings the child made; and

9 (2) if the child made markings on public property, a
10 street sign, or an official traffic-control device in violation of
11 Section 28.08, Penal Code, shall [~~may~~] order the child, and may
12 order [~~or~~] a parent or other person responsible for the child's
13 support, to:

14 (A) make to the political subdivision that owns
15 the public property or erected the street sign or official
16 traffic-control device restitution in an amount equal to the lesser
17 of the cost to the political subdivision of replacing or restoring
18 the public property, street sign, or official traffic-control
19 device; or

20 (B) with the consent of the political
21 subdivision, restore the public property, street sign, or official
22 traffic-control device by removing or painting over any markings
23 made by the child on the property, sign, or device.

24 SECTION 5. Section 28.08(d), Penal Code, is amended to read
25 as follows:

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

27 (1) either:

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

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

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

9 SECTION 6. Section 71.02(a), Penal Code, is amended to read
10 as follows:

11 (a) A person commits an offense if, with the intent to
12 establish, maintain, or participate in a combination or in the
13 profits of a combination or as a member of a criminal street gang,
14 he commits or conspires to commit one or more of the following:

15 (1) murder, capital murder, arson, aggravated
16 robbery, robbery, burglary, theft, aggravated kidnapping,
17 kidnapping, aggravated assault, aggravated sexual assault, sexual
18 assault, forgery, deadly conduct, assault punishable as a Class A
19 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
20 motor vehicle;

21 (2) any gambling offense punishable as a Class A
22 misdemeanor;

23 (3) promotion of prostitution, aggravated promotion
24 of prostitution, or compelling prostitution;

25 (4) unlawful manufacture, transportation, repair, or
26 sale of firearms or prohibited weapons;

27 (5) unlawful manufacture, delivery, dispensation, or

1 distribution of a controlled substance or dangerous drug, or
2 unlawful possession of a controlled substance or dangerous drug
3 through forgery, fraud, misrepresentation, or deception;

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

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

10 (8) any felony offense under Chapter 32;

11 (9) any offense under Chapter 36;

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

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

14 (12) any offense under Chapter 20A; ~~[or]~~

15 (13) any offense under Section 37.10; or

16 (14) any offense under Section 28.08.

17 SECTION 7. Section 521.320, Transportation Code, is amended
18 to read as follows:

19 Sec. 521.320. SUSPENSION FOR CONVICTION OR ADJUDICATION
20 INVOLVING GRAFFITI [~~CERTAIN CRIMINAL MISCHIEF~~]; LICENSE DENIAL.

21 (a) A court shall [~~may~~] order the department to suspend a person's
22 driver's license on conviction of an offense under Section 28.08,
23 Penal Code. A juvenile court shall order the department to suspend
24 a person's provisional license or driver's license if the person has
25 been adjudicated to have engaged in delinquent conduct that
26 violates Section 28.08, Penal Code.

27 (b) A court shall [~~may~~] order the department to deny an

1 application for reinstatement or issuance of a driver's license to
2 a person convicted of an offense under Section 28.08, Penal Code,
3 who, on the date of the conviction, did not hold a driver's license.
4 A juvenile court shall order the department to deny an application
5 for reinstatement or issuance of a provisional license or driver's
6 license to a person who has been adjudicated to have engaged in
7 delinquent conduct that violates Section 28.08, Penal Code, and
8 who, on the date of the adjudication, did not hold a provisional
9 license or driver's license.

10 (c) The period of suspension under this section is one year
11 after the date of a final conviction or the date on which the
12 disposition is made, as applicable. The period of license denial is
13 one year after the date the person applies to the department for
14 reinstatement or issuance of a provisional license or driver's
15 license.

16 (d) The department may not reinstate a provisional license
17 or driver's license suspended under Subsection (a) unless the
18 person whose license was suspended applies to the department for
19 reinstatement.

20 (e) A person whose license is suspended under Subsection (a)
21 remains eligible to receive an occupational license under
22 Subchapter L or a hardship license under Section 521.223.

23 (f) For the purposes of this section, a person is convicted
24 of an offense regardless of whether the sentence is imposed or the
25 person is placed on community supervision for the offense under
26 Article 42.12, Code of Criminal Procedure.

27 SECTION 8. The change in law made by this Act applies only

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

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