

House Bill 1633
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

(3) If the court orders a defendant to make restitution under this subsection [~~subdivision~~] and the defendant is

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financially unable to make the restitution, the court may order the defendant to perform a specific number of hours of community service[~~-, including service restoring the property by removing or painting over any markings the defendant made,~~] to satisfy the restitution.

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

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

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

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

(1) at least 15 hours of community service if the amount

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of pecuniary loss resulting from the commission of the offense is \$50 or more but less than \$500; or
(2) at least 30 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$500 or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

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SECTION 4. Sections 28.08(a) 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 makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

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

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

- (1) either:
 - (A) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; or
 - (B) the person has been previously convicted two or more times of an offense under this section committed when the person was older than 17 years of age; and
- (2) the amount of the pecuniary loss to real property or to tangible personal property is any amount less than \$20,000.

SECTION 5. The change in law made by this Act applies only to an offense that is committed or conduct that occurs on or after the effective date of this Act. An offense that is committed or conduct that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the conduct

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

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

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occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed or conduct occurred before the effective date of this Act if any element of the offense or conduct occurred before that date.

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

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