

BILL ANALYSIS

C.S.H.B. 38
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Aerosol paint is the most frequently used substance in defacing public and private property. Interested parties contend that current laws do not sufficiently deter persons from tagging building surfaces or making any other mark or graffiti on surfaces. To further discourage the act of graffiti, C.S.H.B. 38 enhances certain categories of offenses and the related punishments.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 38 amends the Penal Code to make a graffiti offense a Class A misdemeanor, regardless of the monetary amount of pecuniary loss to the owner of the marked property, and to set at 72 hours the minimum term of confinement for such an offense. The bill enhances the penalty for a subsequent conviction of a graffiti offense to the next higher category of offense and establishes that a defendant has been previously convicted if the defendant was adjudged guilty of a graffiti offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision. The bill establishes that a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of a Texas graffiti offense is a conviction under Texas graffiti laws. The bill includes a city hall and a courthouse among the places on which the commission of a graffiti offense results in a penalty enhancement to a state jail felony.

C.S.H.B. 38 amends the Civil Practice and Remedies Code to include in the definition of "gang activity," for purposes of provisions of law relating to membership in a criminal street gang, a graffiti offense that occurs at a city hall or a courthouse.

C.S.H.B. 38 amends the Transportation Code to require, rather than authorize, a court to order the Department of Public Safety to suspend a person's driver's license on conviction of a graffiti offense. The bill requires a juvenile court to order the department to suspend a person's provisional license or driver's license if the person has been adjudicated to have engaged in delinquent conduct that violates provisions relating to graffiti. The bill requires a juvenile court to order the department to deny an application for reinstatement or issuance of a provisional license or driver's license to a person adjudicated to have engaged in such conduct who, on the date of the adjudication, did not hold such a license. The bill requires, rather than authorizes, a court to order the department to deny an application for reinstatement or issuance of a driver's license to a person convicted of a graffiti offense and who, on the date of the conviction, did not hold a driver's license. The bill extends the period of license suspension for a conviction or adjudication involving graffiti from one year to two years after the date of a final conviction or the date on which the disposition is made. The bill extends the period of license denial for a

conviction or adjudication involving graffiti from one year to two years after the date a person applies to the department for reinstatement or issuance of a provisional license or driver's license. The bill specifies that a person whose license is suspended for a conviction or adjudication involving graffiti remains eligible to receive a hardship license.

C.S.H.B. 38 makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 38 differs from the original by including a city hall and a courthouse among the places on which the commission of a graffiti offense results in a penalty enhancement to a state jail felony, whereas the original includes a government building among those places. The substitute differs from the original by including in the definition of "gang activity," for purposes of provisions of law relating to membership in a criminal street gang, a graffiti offense that occurs at a city hall or a courthouse, whereas the original includes a graffiti offense that occurs at a government building.