

By: Menendez

H.B. No. 38

A BILL TO BE ENTITLED

AN ACT

relating to the criminal penalty for and certain civil consequences of damaging property with graffiti.

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

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

(b) Except as provided by Subsection (c) [~~(d)~~], an offense under this section is[+]

~~[(1)] a Class A [B] misdemeanor, except that the offense is a state jail felony if the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, a city hall, a courthouse, or a historic structure, or on a community center that provides medical, social, or educational programs [if the amount of pecuniary loss is less than \$500,~~

~~[(2)] a Class A misdemeanor if the amount of pecuniary loss is \$500 or more but less than \$1,500,~~

~~[(3)] a state jail felony if the amount of pecuniary loss is \$1,500 or more but less than \$20,000,~~

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

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

~~[(6)] a felony of the first degree if the amount of~~

1 ~~pecuniary loss is \$200,000 or more].~~

2 (c) An offense under this section is increased to the next
3 higher category of offense if it is shown on the trial of the
4 offense that the defendant has been previously convicted of an
5 offense under this section. [~~When more than one item of tangible~~
6 ~~property, belonging to one or more owners, is marked in violation of~~
7 ~~this section pursuant to one scheme or continuing course of~~
8 ~~conduct, the conduct may be considered as one offense, and the~~
9 ~~amounts of pecuniary loss to property resulting from the marking of~~
10 ~~the property may be aggregated in determining the grade of the~~
11 ~~offense.~~]

12 (d) For the purposes of Subsection (c) [~~An offense under~~
13 ~~this section is a state jail felony if]:~~

14 (1) a defendant has been previously convicted of an
15 offense under this section if the defendant was adjudged guilty of
16 the offense or entered a plea of guilty or nolo contendere in return
17 for a grant of deferred adjudication, regardless of whether the
18 sentence for the offense was ever imposed or whether the sentence
19 was probated and the defendant was subsequently discharged from
20 community supervision [~~the marking is made on a school, an~~
21 ~~institution of higher education, a place of worship or human~~
22 ~~burial, a public monument, or a community center that provides~~
23 ~~medical, social, or educational programs]; and~~

24 (2) a conviction under the laws of another state for an
25 offense containing elements that are substantially similar to the
26 elements of an offense under this section is a conviction of an
27 offense under this section [~~the amount of the pecuniary loss to real~~

1 ~~property or to tangible personal property is less than \$20,000].~~

2 SECTION 2. Section 28.08(e), Penal Code, is amended by
3 adding Subdivision (2-a) to read as follows:

4 (2-a) "Historic structure" means a structure that:

5 (A) is publicly owned and included on the
6 National Register of Historic Places;

7 (B) is designated as a Recorded Texas Historic
8 Landmark; or

9 (C) is designated as a State Archeological
10 Landmark.

11 SECTION 3. Section 125.061(3), Civil Practice and Remedies
12 Code, is amended to read as follows:

13 (3) "Gang activity" means the following types of
14 conduct:

15 (A) organized criminal activity as described by
16 Section 71.02, Penal Code;

17 (B) terroristic threat as described by Section
18 22.07, Penal Code;

19 (C) coercing, soliciting, or inducing gang
20 membership as described by Section 71.022 [~~22.015~~], Penal Code;

21 (D) criminal trespass as described by Section
22 30.05, Penal Code;

23 (E) disorderly conduct as described by Section
24 42.01, Penal Code;

25 (F) criminal mischief as described by Section
26 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;

27 (G) a graffiti offense in violation of Section

1 28.08, Penal Code, that:

2 (i) causes a pecuniary loss of \$500 or more;

3 or

4 (ii) occurs at a school, an institution of
5 higher education, a place of worship or human cemetery, a public
6 monument, a city hall, a courthouse, or a historic structure, or at
7 a community center that provides medical, social, or educational
8 programs;

9 (H) a weapons offense in violation of Chapter 46,
10 Penal Code; or

11 (I) unlawful possession of a substance or other
12 item in violation of Chapter 481, Health and Safety Code.

13 SECTION 4. Article 42.12, Code of Criminal Procedure, is
14 amended by adding Section 13G to read as follows:

15 Sec. 13G. GRAFFITI COMMUNITY SUPERVISION. A judge granting
16 community supervision to a defendant convicted of an offense under
17 Section 20.08, Penal Code, shall require as a condition of
18 community supervision that the defendant submit to not less than 72
19 hours of confinement in county jail.

20 SECTION 5. Section 54.0481, Family Code, is amended by
21 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
22 read as follows:

23 (a) Except as provided by Subsection (a-1), a [A] juvenile
24 court, in a disposition hearing under Section 54.04 regarding a
25 child who has been adjudicated to have engaged in delinquent
26 conduct that violates Section 28.08, Penal Code:

27 (1) may order the child or a parent or other person

1 responsible for the child's support to make restitution by:

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

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

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

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

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

21 (a-1) A juvenile court, in a disposition hearing described
22 by Subsection (a) involving a child who has previously been
23 adjudicated for having engaged in delinquent conduct that violates
24 Section 28.08, Penal Code, in addition to any other disposition
25 ordered, if the child made markings on a historic structure or other
26 property described in Section 28.08(a), Penal Code, or private
27 property, shall order the child and the parent or other person

1 responsible for the child's support to make restitution by
2 personally restoring the property by removing or painting over any
3 markings the child made, with the consent of the owner of the
4 property.

5 (a-2) A juvenile court may not require that a child or a
6 child's parent or other person responsible for the child's support
7 personally restore the property under this section if:

8 (1) the child, parent, or other person is physically
9 or mentally incapable of participating in the restoration; or

10 (2) the restoration is inherently dangerous or would
11 otherwise endanger the health or safety of the child, parent, or
12 other person.

13 SECTION 6. Section 521.320, Transportation Code, is amended
14 to read as follows:

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

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

23 (b) A court shall [~~may~~] order the department to deny an
24 application for reinstatement or issuance of a driver's license to
25 a person convicted of an offense under Section 28.08, Penal Code,
26 who, on the date of the conviction, did not hold a driver's license.
27 A juvenile court shall order the department to deny an application

1 for reinstatement or issuance of a provisional license or driver's
2 license to a person who has been adjudicated to have engaged in
3 delinquent conduct that violates Section 28.08, Penal Code, and
4 who, on the date of the adjudication, did not hold a provisional
5 license or driver's license.

6 (c) The period of suspension under this section is two years
7 [~~one year~~] after the date of a final conviction or the date on which
8 the disposition is made, as applicable. The period of license
9 denial is two years [~~one year~~] after the date the person applies to
10 the department for reinstatement or issuance of a provisional
11 license or driver's license.

12 (d) The department may not reinstate a provisional license
13 or driver's license suspended under Subsection (a) unless the
14 person whose license was suspended applies to the department for
15 reinstatement.

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

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

23 SECTION 7. The changes in law made by this Act in amending
24 Section 28.08, Penal Code, and Section 521.320, Transportation
25 Code, apply only to an offense committed, or conduct violating a
26 penal law that occurs, on or after the effective date of this Act.
27 An offense committed, or conduct violating a penal law that occurs,

1 before the effective date of this Act is governed by the law in
2 effect when the offense was committed or the conduct occurred, and
3 the former law is continued in effect for that purpose. For
4 purposes of this section, an offense was committed, or conduct
5 violating a penal law occurred, before the effective date of this
6 Act if any element of the offense or violation occurred before that
7 date.

8 SECTION 8. The change in law made by this Act in amending
9 Section 125.061, Civil Practice and Remedies Code, applies only to
10 a cause of action that accrues on or after the effective date of
11 this Act. A cause of action that accrued before the effective date
12 of this Act is governed by the law in effect immediately before the
13 effective date of this Act, and that law is continued in effect for
14 that purpose.

15 SECTION 9. The change in law made by this Act to Section
16 54.0481, Family Code, applies only to conduct violating a penal law
17 that occurs on or after the effective date of this Act. Conduct
18 violating a penal law that occurs before the effective date of this
19 Act is governed by the law in effect on the date the conduct
20 occurred, and the former law is continued in effect for that
21 purpose. For purposes of this section, conduct violating a penal
22 law occurred before the effective date of this Act if any element of
23 the violation occurred before that date.

24 SECTION 10. This Act takes effect September 1, 2011.