

BILL ANALYSIS

C.S.H.B. 36
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that aerosol paint is the most frequently used substance in defacing public and private property. The parties contend that current Texas laws regarding graffiti do not sufficiently deter individuals from tagging building surfaces or making any other mark or graffiti on these surfaces. C.S.H.B. 36 seeks to further discourage graffiti offenses by making changes in the criminal penalty for and civil consequences of damaging property with graffiti.

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. 36 amends the Penal Code to enhance the penalty for a subsequent conviction of graffiti to the next higher category of offense and to establish that a defendant has been previously convicted if the person was adjudged guilty 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 probated and the defendant subsequently discharged from community supervision. The bill specifies that a conviction under the laws of another state for an offense containing elements substantially similar to the elements of a Texas graffiti offense is considered a conviction under Texas graffiti laws. The bill includes a city hall, a courthouse, a historic structure, and a cultural resource site or area, such as a site or area containing petroglyphs or pictographs, among the places on which the commission of a graffiti offense causing less than \$20,000 in pecuniary loss results in a penalty enhancement to a state jail felony.

C.S.H.B. 36 amends the Code of Criminal Procedure to require a court granting community supervision to a defendant convicted of a graffiti offense to require as a condition of community supervision that the defendant submit to not less than 12 and no more than 48 hours of confinement in county jail, in addition to community service requirements after release from jail.

C.S.H.B. 36 amends the Family Code to require a juvenile court in a disposition hearing for a child who has been adjudicated to have engaged in delinquent conduct involving marking a historic structure, or other specified building, monument, or cultural resource site or area, or private property and who has previously been adjudicated for having engaged in delinquent conduct that constitutes a graffiti offense to order the child and the parent or other person responsible for the child's support to make restitution by personally restoring the property with consent of the property owner, except under certain circumstances relating to the physical or mental capability of the person restoring the property or the dangerous nature of the restoration.

C.S.H.B. 36 amends the Transportation Code to require a juvenile court to order the Department of Public Safety (DPS) to suspend a person's driver's license or provisional license or deny an application for reinstatement or issuance of a driver's license or provisional license if the person

has been adjudicated to have engaged in conduct that constitutes a graffiti offense. The bill requires, rather than authorizes, a court to order DPS to suspend a person's driver's license or deny such an application on conviction of a graffiti offense. The bill extends the period of license suspension from one year to two years after the date of a final conviction of a graffiti offense or after the date on which a disposition by a juvenile court is made, as applicable, and extends the period of license denial for such a conviction or adjudication from one year to two years after the date the person applies for reinstatement or issuance of a provisional license or driver's license. The bill specifies that a person whose license is suspended remains eligible to receive a hardship license.

C.S.H.B. 36 amends the Civil Practice and Remedies Code to make a nonsubstantive change.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 36 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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 pecuniary loss is \$200,000 or~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 28.08, Penal Code, is amended by amending Subsections (b) and (d) and adding Subsections (c-1) and (c-2) to read as follows:

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

(1) a Class **B** misdemeanor

(See (d) below.)

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 pecuniary loss is \$200,000 or more.

~~more].~~

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

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

~~(1) a defendant has been previously convicted of an offense under this section if the defendant was adjudged guilty of the 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 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]; and~~

~~(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense under this section is a conviction of an offense under this section [the amount of the pecuniary loss to real property or to tangible personal property is less than \$20,000].~~

(See (b) above.)

(c-1) An offense under this section is increased to the next higher category of offense if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(c-2) For the purposes of Subsection (c-1):

(1) a defendant has been previously convicted of an offense under this section if the defendant was adjudged guilty of the 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; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense under this section is a conviction of an offense under this section.

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

(1) the marking is made on:

(A) 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;

(B) a cultural resource site or area, such as a site or area containing petroglyphs or pictographs; or

(C) a community center that provides medical, social, or educational programs;

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

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

(2-a) "Historic structure" means a structure that:
(A) is publicly owned and included on the National Register of Historic Places;
(B) is designated as a Recorded Texas Historic Landmark; or
(C) is designated as a State Archeological Landmark.

SECTION 3. Section 125.061(3), Civil Practice and Remedies Code, is amended.

SECTION 4. Section 11(k), Article 42.12, Code of Criminal Procedure, is amended 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 submit to not less than 72 hours of confinement in county jail and that the defendant, after release from jail, perform:

- (1) at least 15 hours of community service if the amount 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 5. Section 54.0481, Family Code, is amended.

SECTION 6. Section 521.320, Transportation Code, is amended.

SECTION 7. The changes in law made by this Act in amending Section 11(k), Article

SECTION 2. Section 28.08(e), Penal Code, is amended by adding Subdivisions (1-a) and (2-a) to read as follows:

(1-a) "Cultural resource site or area" means a publicly or privately owned site or area having valuable and vulnerable cultural or historic resources.

(2-a) "Historic structure" means a structure that:
(A) is publicly owned and included on the National Register of Historic Places;
(B) is designated as a Recorded Texas Historic Landmark; or
(C) is designated as a State Archeological Landmark.

SECTION 3. Same as introduced version.

SECTION 4. Section 11(k), Article 42.12, Code of Criminal Procedure, is amended 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 submit to not less than 12 and not more than 48 hours of confinement in county jail and that the defendant, after release from jail, perform:

- (1) at least 15 hours of community service if the amount 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 5. Substantially the same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

42.12, Code of Criminal Procedure, Section 54.0481, Family Code, Section 28.08, Penal Code, and Section 521.320, Transportation Code, apply only to an offense committed, or conduct violating a penal law that occurs, on or after the effective date of this Act. An offense committed, or conduct violating a penal law that occurs, before the effective date of this Act is governed by the law in effect when the offense was committed or the conduct occurred, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed, or conduct violating a penal law occurred, before the effective date of this Act if any element of the offense or violation occurred before that date.

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

SECTION 9. This Act takes effect September 1, 2013.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.