

BILL ANALYSIS

C.S.H.B. 3494
By: Moody
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that current Texas statutes regarding the pecuniary loss resulting from damage caused by a graffiti offense, which determines the penalty grade for the offense, have not been updated by the legislature in many years and are behind the curve of inflation. Others point to the lack of a dedicated pretrial diversion program to address graffiti offenses in Texas and to the success of other states' diversion programs requiring restitution, graffiti removal, art-based programs, and other community service. C.S.H.B. 3494 addresses these concerns by adjusting certain pecuniary loss thresholds associated with graffiti offenses, creating a pretrial diversion program specific to persons convicted of graffiti offenses, and authorizing fees for certain expenses related to a graffiti pretrial diversion program.

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. 3494 amends the Penal Code to make a graffiti offense a Class C misdemeanor if the amount of pecuniary loss resulting from the offense is less than \$50 and establishes at \$50 the minimum amount of pecuniary loss that makes a graffiti offense a Class B misdemeanor. The bill establishes at \$500 the minimum amount of pecuniary loss that makes a graffiti offense committed on a school, an institution of higher education, a place of worship or human burial, a public monument, or certain community centers a state jail felony.

C.S.H.B. 3494 amends the Code of Criminal Procedure to include a Class A misdemeanor graffiti offense among the offenses for which a peace officer is authorized to issue to a certain person charged with committing the offense a citation containing notice to appear before a magistrate, instead of taking the person before a magistrate.

C.S.H.B. 3494 authorizes a court, at any time before trial commences and on the joint motion of a defendant charged with a misdemeanor or state jail felony graffiti offense and the attorney representing the state, to defer proceedings pending the defendant's completion of a pretrial diversion program in which the defendant must perform community service that must, to the extent possible, include graffiti removal and that may include outreach education focused on graffiti prevention and eradication, youth mentoring in art-based programs, mural painting, or another form of community service and in which the defendant must make restitution to the owner of the property on which the defendant made markings by reimbursing the owner for the cost of restoring the property or, with the owner's consent, by personally restoring the property by removing or painting over any markings the defendant made. The bill requires the community service to consist of a specified range of hours depending on the category of offense. The bill requires a court that defers proceedings under the bill's provisions to set a reasonable date by which the defendant must complete the program, which may be extended in the court's discretion not later than one year after the date the proceedings were deferred. The bill requires a court to

dismiss the case if satisfactory evidence is presented that the defendant successfully completed such a program by the date specified.

C.S.H.B. 3494 authorizes a district attorney, criminal district attorney, or county attorney to collect from any defendant referred to a graffiti pretrial diversion program fees in the following amounts: an amount not to exceed \$500 to be used to reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to the defendant's participation in a graffiti pretrial diversion program offered in that county; and the amount of \$50 to be used for the prevention of juvenile delinquency and for graffiti eradication. The bill requires fees collected for such reimbursement to be deposited in the county treasury to the credit of a special fund to be used solely to administer the graffiti pretrial diversion program and requires fees collected for such prevention to be deposited in the county treasury to the credit of the county juvenile delinquency prevention fund.

C.S.H.B. 3494 amends the Government Code to make conforming changes.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3494 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) and (d), Penal Code, are amended to read as follows:

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class C misdemeanor if the amount of pecuniary loss is less than \$200;

(2) a Class B misdemeanor if the amount of pecuniary loss is \$200 or more but less than \$1,000 [\$500];

(3) ~~[(2)]~~ a Class A misdemeanor if the amount of pecuniary loss is ~~\$1,000 [\$500]~~ or more but less than ~~\$3,000 [\$1,500];~~

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

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

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

(7) ~~[(6)]~~ a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

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

HOUSE COMMITTEE SUBSTITUTE

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

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class C misdemeanor if the amount of pecuniary loss is less than \$50;

(2) a Class B misdemeanor if the amount of pecuniary loss is ~~\$50~~ or more but less than \$500;

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

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

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

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

(7) ~~[(6)]~~ a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.

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

(1) 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) the amount of the pecuniary loss to real property or to tangible personal property is \$1,500 or more but less than \$20,000.

SECTION 2. Article 14.06(d), Code of Criminal Procedure, is amended.

SECTION 3. Chapter 32, Code of Criminal Procedure, is amended by adding Article 32.03.

No equivalent provision.

(1) 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) the amount of the pecuniary loss to real property or to tangible personal property is \$500 or more but less than \$20,000.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.01215 to read as follows:

Art. 102.01215. FEES FOR CERTAIN EXPENSES RELATED TO GRAFFITI PRETRIAL DIVERSION PROGRAM. (a) A district attorney, criminal district attorney, or county attorney may collect from any defendant referred to a graffiti pretrial diversion program under Article 32.03 fees in the following amounts:

(1) an amount not to exceed \$500 to be used to reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to the defendant's participation in a graffiti pretrial diversion program offered in that county; and

(2) the amount of \$50 to be used for the prevention of juvenile delinquency and for graffiti eradication.

(b) Fees collected under Subsection (a)(1) shall be deposited in the county treasury to the credit of a special fund to be used solely to administer the graffiti pretrial diversion program.

(c) Fees collected under Subsection (a)(2) shall be deposited in the county treasury to the credit of the county juvenile delinquency prevention fund under Article 102.0171.

No equivalent provision.

SECTION 5. Section 103.021, Government Code, is amended to read as follows:

Sec. 103.021. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: CODE OF CRIMINAL PROCEDURE. An accused or defendant, or a party to a civil

suit, as applicable, shall pay the following fees and costs under the Code of Criminal Procedure if ordered by the court or otherwise required:

- (1) a personal bond fee (Art. 17.42, Code of Criminal Procedure) . . . the greater of \$20 or three percent of the amount of the bail fixed for the accused;
- (2) cost of electronic monitoring as a condition of release on personal bond (Art. 17.43, Code of Criminal Procedure) . . . actual cost;
- (3) a fee for verification of and monitoring of motor vehicle ignition interlock (Art. 17.441, Code of Criminal Procedure) . . . not to exceed \$10;
- (3-a) costs associated with operating a global positioning monitoring system as a condition of release on bond (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;
- (3-b) costs associated with providing a defendant's victim with an electronic receptor device as a condition of the defendant's release on bond (Art. 17.49(b)(3), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;
- (4) repayment of reward paid by a crime stoppers organization on conviction of a felony (Art. 37.073, Code of Criminal Procedure) . . . amount ordered;
- (5) reimbursement to general revenue fund for payments made to victim of an offense as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50 for a misdemeanor offense or \$100 for a felony offense;
- (6) payment to a crime stoppers organization as condition of community supervision (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50;
- (7) children's advocacy center fee (Art. 42.12, Code of Criminal Procedure) . . . not to exceed \$50;
- (8) family violence center fee (Art. 42.12, Code of Criminal Procedure) . . . \$100;
- (9) community supervision fee (Art. 42.12, Code of Criminal Procedure) . . . not less than \$25 or more than \$60 per month;
- (10) additional community supervision fee for certain offenses (Art. 42.12, Code of Criminal Procedure) . . . \$5 per month;
- (11) for certain financially able sex offenders as a condition of community supervision, the costs of treatment, specialized supervision, or

rehabilitation (Art. 42.12, Code of Criminal Procedure) . . . all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation as determined by the judge;

(12) fee for failure to appear for trial in a justice or municipal court if a jury trial is not waived (Art. 45.026, Code of Criminal Procedure) . . . costs incurred for impaneling the jury;

(13) costs of certain testing, assessments, or programs during a deferral period (Art. 45.051, Code of Criminal Procedure) . . . amount ordered;

(14) special expense on dismissal of certain misdemeanor complaints (Art. 45.051, Code of Criminal Procedure) . . . not to exceed amount of fine assessed;

(15) an additional fee:

(A) for a copy of the defendant's driving record to be requested from the Department of Public Safety by the judge (Art. 45.0511(c-1), Code of Criminal Procedure) . . . amount equal to the sum of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee;

(B) as an administrative fee for requesting a driving safety course or a course under the motorcycle operator training and safety program for certain traffic offenses to cover the cost of administering the article (Art. 45.0511(f)(1), Code of Criminal Procedure) . . . not to exceed \$10; or

(C) for requesting a driving safety course or a course under the motorcycle operator training and safety program before the final disposition of the case (Art. 45.0511(f)(2), Code of Criminal Procedure) . . . not to exceed the maximum amount of the fine for the offense committed by the defendant;

(16) a request fee for teen court program (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;

(17) a fee to cover costs of required duties of teen court (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise \$10;

(18) a mileage fee for officer performing certain services (Art. 102.001, Code of Criminal Procedure) . . . \$0.15 per mile;

(19) certified mailing of notice of hearing

date (Art. 102.006, Code of Criminal Procedure) . . . \$1, plus postage;

(20) certified mailing of certified copies of an order of expunction (Art. 102.006, Code of Criminal Procedure) . . . \$2, plus postage;

(20-a) a fee to defray the cost of notifying state agencies of orders of expungement (Art. 45.0216, Code of Criminal Procedure) . . . \$30 per application;

(20-b) a fee to defray the cost of notifying state agencies of orders of expunction (Art. 45.055, Code of Criminal Procedure) . . . \$30 per application;

(21) sight orders:

(A) if the face amount of the check or sight order does not exceed \$10 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$10;

(B) if the face amount of the check or sight order is greater than \$10 but does not exceed \$100 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$15;

(C) if the face amount of the check or sight order is greater than \$100 but does not exceed \$300 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$30;

(D) if the face amount of the check or sight order is greater than \$300 but does not exceed \$500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$50; and

(E) if the face amount of the check or sight order is greater than \$500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed \$75;

(22) fees for ~~[a]~~ pretrial intervention or diversion programs ~~[program]~~:

(A) a supervision fee (Art. 102.012(a), Code of Criminal Procedure) . . . \$60 a month plus expenses; ~~and~~

(B) a district attorney, criminal district attorney, or county attorney administrative fee (Art. 102.0121, Code of Criminal Procedure) . . . not to exceed \$500;

(C) a district attorney, criminal district attorney, or county attorney administrative fee (Art. 102.01215(a)(1), Code of Criminal Procedure) . . . not to exceed \$500; and

(D) a fee payable to the county juvenile delinquency prevention fund (Art. 102.01215(a)(2), Code of Criminal Procedure) . . . \$50;

(23) parking fee violations for child safety fund in municipalities with populations:

(A) greater than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not less

than \$2 and not to exceed \$5; and
(B) less than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not to exceed \$5;
(24) an administrative fee for collection of fines, fees, restitution, or other costs (Art. 102.072, Code of Criminal Procedure) . . . not to exceed \$2 for each transaction; and
(25) a collection fee, if authorized by the commissioners court of a county or the governing body of a municipality, for certain debts and accounts receivable, including unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid (Art. 103.0031, Code of Criminal Procedure) . . . 30 percent of an amount more than 60 days past due.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.