

By: Menendez

H.B. No. 36

Substitute the following for H.B. No. 36:

By: Herrero

C.S.H.B. No. 36

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. 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 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.

(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

1 offense under this section.

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

3 (1) a defendant has been previously convicted of an  
4 offense under this section if the defendant was adjudged guilty of  
5 the offense or entered a plea of guilty or nolo contendere in return  
6 for a grant of deferred adjudication, regardless of whether the  
7 sentence for the offense was ever imposed or whether the sentence  
8 was probated and the defendant was subsequently discharged from  
9 community supervision; and

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

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

15 (1) the marking is made on:

16 (A) a school, an institution of higher education,  
17 a place of worship or human burial, a public monument, a city hall,  
18 a courthouse, or a historic structure;

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

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

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

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

27 (1-a) "Cultural resource site or area" means a

1 publicly or privately owned site or area having valuable and  
2 vulnerable cultural or historic resources.

3 (2-a) "Historic structure" means a structure that:

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

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

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

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

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

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

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

18 (C) coercing, soliciting, or inducing gang  
19 membership as described by Section 71.022 [~~71.022(a) or (a-1)~~],  
20 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;

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

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

6 SECTION 4. Section 11(k), Article 42.12, Code of Criminal  
7 Procedure, is amended to read as follows:

8 (k) A court granting community supervision to a defendant  
9 convicted of an offense under Section 28.08, Penal Code, shall  
10 require as a condition of community supervision that the defendant  
11 submit to not less than 12 and not more than 48 hours of confinement  
12 in county jail and that the defendant, after release from jail,  
13 perform:

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

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

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(d), 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 11(k), Article 42.12, Code of Criminal Procedure, Section  
25 54.0481, Family Code, Section 28.08, Penal Code, and Section  
26 521.320, Transportation Code, apply only to an offense committed,  
27 or conduct violating a penal law that occurs, on or after the

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

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

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