

By: Moody

H.B. No. 3494

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for the offense of graffiti and the creation of a graffiti pretrial diversion program.

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

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:

1           (1) the marking is made on a school, an institution of  
2 higher education, a place of worship or human burial, a public  
3 monument, or a community center that provides medical, social, or  
4 educational programs; and

5           (2) the amount of the pecuniary loss to real property  
6 or to tangible personal property is \$1,500 or more but less than  
7 \$20,000.

8           SECTION 2. Article 14.06(d), Code of Criminal Procedure, is  
9 amended to read as follows:

10          (d) Subsection (c) applies only to a person charged with  
11 committing an offense under:

12           (1) Section 481.121, Health and Safety Code, if the  
13 offense is punishable under Subsection (b)(1) or (2) of that  
14 section;

15           (1-a) Section 481.1161, Health and Safety Code, if the  
16 offense is punishable under Subsection (b)(1) or (2) of that  
17 section;

18           (2) Section 28.03, Penal Code, if the offense is  
19 punishable under Subsection (b)(2) of that section;

20           (3) Section 28.08, Penal Code, if the offense is  
21 punishable under Subsection (b)(2) or (3) [~~(b)(1)~~] of that section;

22           (4) Section 31.03, Penal Code, if the offense is  
23 punishable under Subsection (e)(2)(A) of that section;

24           (5) Section 31.04, Penal Code, if the offense is  
25 punishable under Subsection (e)(2) of that section;

26           (6) Section 38.114, Penal Code, if the offense is  
27 punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

SECTION 3. Chapter 32, Code of Criminal Procedure, is amended by adding Article 32.03 to read as follows:

Art. 32.03. DISMISSAL OF CERTAIN GRAFFITI CHARGES ON COMPLETION OF PRETRIAL DIVERSION PROGRAM. (a) Any time before trial commences, on the joint motion of a defendant charged with an offense punishable under Sections 28.08(b)(1)-(4) or (d), Penal Code, and the attorney representing the state, a court may defer proceedings pending the defendant's completion of a pretrial diversion program in which the defendant must:

(1) perform community service that:

(A) must, to the extent possible, include graffiti removal; and

(B) 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

(2) make restitution to the owner of the property on which the defendant made markings, by:

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

(B) with the consent of the owner of the property, personally restoring the property by removing or painting over any markings the defendant made.

(b) The community service described by Subsection (a)(1) must consist of:

(1) at least 25 hours and not more than 100 hours if the offense is punishable under Section 28.08(b)(1), Penal Code;

1           (2) at least 50 hours and not more than 200 hours if  
2 the offense is punishable under Section 28.08(b)(2), Penal Code;

3           (3) at least 75 hours and not more than 300 hours if  
4 the offense is punishable under Section 28.08(b)(3), Penal Code;  
5 and

6           (4) at least 100 hours and not more than 400 hours if  
7 the offense is punishable under Section 28.08(b)(4) or (d), Penal  
8 Code.

9           (c) A court that defers proceedings under Subsection (a)  
10 shall set a reasonable date by which the defendant must complete the  
11 program described in that subsection, which may be extended in the  
12 court's discretion not later than one year after the date the  
13 proceedings were deferred.

14           (d) A court shall dismiss the case if satisfactory evidence  
15 is presented that the defendant successfully completed a program  
16 under Subsection (a) by the date specified under Subsection (c).

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

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