

BILL ANALYSIS

H.B. 883
By: Moody
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that current state law regarding the pecuniary loss resulting from damage caused by a graffiti offense, which determines the penalty grade for the offense, has not been updated by the legislature in several years and is 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. H.B. 883 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 883 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 to establish 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.

H.B. 883 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. The bill authorizes a court, any time before trial commences and on the joint motion of the attorney representing the state and a defendant charged with a misdemeanor or state jail felony graffiti offense, to defer proceedings pending the defendant's completion of a graffiti pretrial diversion program. The bill requires a defendant in such a program to perform community service that must include graffiti removal, to the extent possible, and may include outreach education focused on graffiti prevention and eradication, youth mentoring in art-based programs, mural painting, or another form of community service. The bill also requires a defendant in the program to 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 prescribes the number of hours of community service required to be performed under the graffiti pretrial diversion program for each applicable level of offense committed. 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 the program by the date specified.

H.B. 883 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 the county reimbursement fee 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 the juvenile delinquency prevention and graffiti eradication fee to be deposited in the county treasury to the credit of the county juvenile delinquency prevention fund.

H.B. 883 amends the Government Code to make conforming changes.

EFFECTIVE DATE

September 1, 2015.