

By: Moody

H.B. No. 883

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; authorizing a fee.

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 \$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 (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 \$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. Article 102.012(b), Code of Criminal Procedure,
18 is amended to read as follows:

19 (b) In addition to or in lieu of the supervision fee
20 authorized by Subsection (a), the court may order the defendant to
21 pay or reimburse a community supervision and corrections department
22 for any other expense that is:

23 (1) incurred as a result of the defendant's
24 participation in the pretrial intervention program, other than an
25 expense described by Article 102.0121 or 102.0122; or

26 (2) necessary to the defendant's successful completion
27 of the program.

SECTION 5. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0122 to read as follows:

Art. 102.0122. 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.

SECTION 6. 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

1 and costs under the Code of Criminal Procedure if ordered by the
2 court or otherwise required:

3 (1) a personal bond fee (Art. [17.42](#), Code of Criminal
4 Procedure) . . . the greater of \$20 or three percent of the amount
5 of the bail fixed for the accused;

6 (2) cost of electronic monitoring as a condition of
7 release on personal bond (Art. [17.43](#), Code of Criminal Procedure)
8 . . . actual cost;

9 (3) a fee for verification of and monitoring of motor
10 vehicle ignition interlock (Art. [17.441](#), Code of Criminal
11 Procedure) . . . not to exceed \$10;

12 (3-a) costs associated with operating a global
13 positioning monitoring system as a condition of release on bond
14 (Art. [17.49\(b\)\(2\)](#), Code of Criminal Procedure) . . . actual costs,
15 subject to a determination of indigency;

16 (3-b) costs associated with providing a defendant's
17 victim with an electronic receptor device as a condition of the
18 defendant's release on bond (Art. [17.49\(b\)\(3\)](#), Code of Criminal
19 Procedure) . . . actual costs, subject to a determination of
20 indigency;

21 (4) repayment of reward paid by a crime stoppers
22 organization on conviction of a felony (Art. [37.073](#), Code of
23 Criminal Procedure) . . . amount ordered;

24 (5) reimbursement to general revenue fund for payments
25 made to victim of an offense as condition of community supervision
26 (Art. [42.12](#), Code of Criminal Procedure) . . . not to exceed \$50 for
27 a misdemeanor offense or \$100 for a felony offense;

1 (6) payment to a crime stoppers organization as
2 condition of community supervision (Art. 42.12, Code of Criminal
3 Procedure) . . . not to exceed \$50;

4 (7) children's advocacy center fee (Art. 42.12, Code
5 of Criminal Procedure) . . . not to exceed \$50;

6 (8) family violence center fee (Art. 42.12, Code of
7 Criminal Procedure) . . . \$100;

8 (9) community supervision fee (Art. 42.12, Code of
9 Criminal Procedure) . . . not less than \$25 or more than \$60 per
10 month;

11 (10) additional community supervision fee for certain
12 offenses (Art. 42.12, Code of Criminal Procedure) . . . \$5 per
13 month;

14 (11) for certain financially able sex offenders as a
15 condition of community supervision, the costs of treatment,
16 specialized supervision, or rehabilitation (Art. 42.12, Code of
17 Criminal Procedure) . . . all or part of the reasonable and
18 necessary costs of the treatment, supervision, or rehabilitation as
19 determined by the judge;

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

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

27 (14) special expense on dismissal of certain

1 misdemeanor complaints (Art. 45.051, Code of Criminal Procedure)
2 . . . not to exceed amount of fine assessed;

3 (15) an additional fee:

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

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

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

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

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

27 (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.
102.0122(a)(1), Code of Criminal Procedure) . . . not to exceed
\$500; and

(D) a fee payable to the county juvenile
delinquency prevention fund (Art. 102.0122(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

1 municipality, for certain debts and accounts receivable, including
2 unpaid fines, fees, court costs, forfeited bonds, and restitution
3 ordered paid (Art. [103.0031](#), Code of Criminal Procedure) . . . 30
4 percent of an amount more than 60 days past due.

5 SECTION 7. The change in law made by this Act applies only
6 to an offense committed on or after the effective date of this Act.
7 An offense committed before the effective date of this Act is
8 governed by the law in effect on the date the offense was committed,
9 and the former law is continued in effect for that purpose. For
10 purposes of this section, an offense was committed before the
11 effective date of this Act if any element of the offense occurred
12 before that date.

13 SECTION 8. This Act takes effect September 1, 2015.