

By: Martinez Fischer

H.B. No. 1558

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal penalties and civil consequences for defendants convicted of an offense of graffiti and for juveniles adjudicated as having engaged in conduct involving graffiti.

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

SECTION 1. Article 42.037(s), Code of Criminal Procedure, is amended to read as follows:

(s)(1) A court shall order ~~[If a court orders]~~ a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution 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, ~~[to the victim of the offense, the court may order the defendant to make restitution as provided by Subsection (b)(1)(B) or by]~~ personally restoring the property by removing or painting over any markings the defendant made.

(2) A court shall order a defendant convicted of an offense under Section 28.08, Penal Code, to make restitution to a political subdivision that owns public property or erects a street sign or official traffic-control device on which the defendant makes markings in violation of Section 28.08, Penal Code, by:

(A) paying an ~~[- The]~~ amount ~~[of the restitution ordered must be]~~ equal to the lesser of ~~[the amount of restitution~~

1 ~~authorized by Subsection (b)(1)(B) or~~ the cost to the political
2 subdivision of replacing or restoring the public property, street
3 sign, or official traffic-control device; or

4 (B) with the consent of the political
5 subdivision, restoring the public property, street sign, or
6 official traffic-control device by removing or painting over any
7 markings made by the defendant on the property, sign, or device.

8 (3) If the court orders a defendant to make
9 restitution under this subsection [~~subdivision~~] and the defendant
10 is financially unable to make the restitution, the court may order
11 the defendant to perform a specific number of hours of community
12 service[~~, including service restoring the property by removing or~~
13 ~~painting over any markings the defendant made,~~] to satisfy the
14 restitution.

15 (4) Notwithstanding Subsection (g)(4), a court shall
16 direct a defendant ordered to make restitution under this
17 subsection as a condition of community supervision to deliver the
18 amount or property due as restitution to the defendant's
19 supervising officer for transfer to the owner. A parole panel shall
20 direct a defendant ordered to make restitution under this
21 subsection as a condition of parole or mandatory supervision to
22 deliver the amount or property due as restitution to the
23 defendant's supervising officer. The defendant's supervising
24 officer shall notify the court when the defendant has delivered the
25 full amount of restitution ordered. On receipt of notice under this
26 subdivision, the court shall notify the Department of Public
27 Safety, for the purposes of Section 521.320, Transportation Code,

1 of the date on which the defendant delivered the full amount of
2 restitution ordered.

3 (5) For purposes of this subsection [~~subdivision~~],
4 "official traffic-control device" has the meaning assigned by
5 Section 541.304, Transportation Code.

6 SECTION 2. Section 11, Article 42.12, Code of Criminal
7 Procedure, is amended by adding Subsection (k) 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 perform a specific number of hours of community service.

12 SECTION 3. Section 54.046, Family Code, is amended by
13 amending Subsection (a) and adding Subsection (d) to read as
14 follows:

15 (a) If a juvenile court places on probation under Section
16 54.04(d) a child adjudicated as having engaged in conduct in
17 violation of Section 28.08, Penal Code, in addition to other
18 conditions of probation, the court:

19 (1) shall [~~may~~] order the child to:

20 (A) reimburse the owner of the property for the
21 cost of restoring the property; or

22 (B) with consent of the owner of the property,
23 restore the property by removing or painting over any markings made
24 by the child on the property; and

25 (2) if the child made markings on public property, a
26 street sign, or an official traffic-control device in violation of
27 Section 28.08, Penal Code, shall [~~may~~] order the child to:

1 (A) make to the political subdivision that owns
2 the public property or erected the street sign or official
3 traffic-control device restitution in an amount equal to the lesser
4 of the cost to the political subdivision of replacing or restoring
5 the public property, street sign, or official traffic-control
6 device; or

7 (B) with the consent of the political
8 subdivision, restore the public property, street sign, or official
9 traffic-control device by removing or painting over any markings
10 made by the child on the property, sign, or device.

11 (d) The juvenile court shall direct a child ordered to make
12 restitution under this section to deliver the amount or property
13 due as restitution to the juvenile probation department for
14 transfer to the owner. The juvenile probation department shall
15 notify the juvenile court when the child has delivered the full
16 amount of restitution ordered. On receipt of notice under this
17 subsection, the juvenile court shall notify the Department of
18 Public Safety, for the purposes of Section 521.320, Transportation
19 Code, of the date on which the full amount of restitution was
20 delivered.

21 SECTION 4. Section 54.0481, Family Code, as added by
22 Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular
23 Session, 2007, is amended by amending Subsection (a) and adding
24 Subsection (d) to read as follows:

25 (a) A juvenile court, in a disposition hearing under Section
26 54.04 regarding a child who has been adjudicated to have engaged in
27 delinquent conduct that violates Section 28.08, Penal Code:

1 (1) shall [~~may~~] order the child, and may order [~~or~~] a
2 parent or other person responsible for the child's support, to make
3 restitution by:

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

6 (B) with the consent of the owner of the
7 property, personally restoring the property by removing or painting
8 over any markings the child made; and

9 (2) if the child made markings on public property, a
10 street sign, or an official traffic-control device in violation of
11 Section 28.08, Penal Code, shall [~~may~~] order the child, and may
12 order [~~or~~] a parent or other person responsible for the child's
13 support, to:

14 (A) make to the political subdivision that owns
15 the public property or erected the street sign or official
16 traffic-control device restitution in an amount equal to the lesser
17 of the cost to the political subdivision of replacing or restoring
18 the public property, street sign, or official traffic-control
19 device; or

20 (B) with the consent of the political
21 subdivision, restore the public property, street sign, or official
22 traffic-control device by removing or painting over any markings
23 made by the child on the property, sign, or device.

24 (d) The juvenile court shall direct a child ordered to make
25 restitution under this section to deliver the amount or property
26 due as restitution to a juvenile probation department for transfer
27 to the owner. The juvenile probation department shall notify the

1 juvenile court when the child has delivered the full amount of
2 restitution ordered. On receipt of notice under this subsection,
3 the juvenile court shall notify the Department of Public Safety,
4 for the purposes of Section 521.320, Transportation Code, of the
5 date on which the full amount of restitution was delivered.

6 SECTION 5. Section 28.08(d), Penal Code, is amended to read
7 as follows:

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

9 (1) either:

10 (A) the marking is made on a school, an
11 institution of higher education, a place of worship or human
12 burial, a public monument, or a community center that provides
13 medical, social, or educational programs; or

14 (B) the person has been previously convicted two
15 or more times of an offense under this section; and

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

18 SECTION 6. Section 521.320, Transportation Code, is amended
19 to read as follows:

20 Sec. 521.320. SUSPENSION FOR CONVICTION OR ADJUDICATION
21 INVOLVING GRAFFITI [~~CERTAIN CRIMINAL MISCHIEF~~]; LICENSE DENIAL.

22 (a) A court shall [~~may~~] order the department to suspend a person's
23 driver's license on conviction of an offense under Section 28.08,
24 Penal Code. A juvenile court shall order the department to suspend
25 a person's provisional license or driver's license if the person has
26 been adjudicated to have engaged in delinquent conduct that
27 violates Section 28.08, Penal Code.

1 (b) A court shall [~~may~~] order the department to deny an
2 application for reinstatement or issuance of a driver's license to
3 a person convicted of an offense under Section 28.08, Penal Code,
4 who, on the date of the conviction, did not hold a driver's license.
5 A juvenile court shall order the department to deny an application
6 for reinstatement or issuance of a provisional license or driver's
7 license to a person who has been adjudicated to have engaged in
8 delinquent conduct that violates Section 28.08, Penal Code, and
9 who, on the date of the adjudication, did not hold a provisional
10 license or driver's license.

11 (c) The period of suspension under this section continues
12 until the later of:

13 (1) [~~is~~] one year after the date of a final conviction
14 or the date on which the disposition is made, as applicable; or

15 (2) the date on which the person has made restitution,
16 as required by Article 42.037(s), Code of Criminal Procedure,
17 Section 54.046, Family Code, or Section 54.0481, Family Code, as
18 added by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature,
19 Regular Session, 2007, as applicable.

20 (c-1) The period of license denial under this section
21 continues until the later of:

22 (1) [~~is~~] one year after the date the person applies to
23 the department for reinstatement or issuance of a driver's license
24 or provisional license; or

25 (2) the date on which the person has made restitution,
26 as required by Article 42.037(s), Code of Criminal Procedure,
27 Section 54.046, Family Code, or Section 54.0481, Family Code, as

1 added by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature,
2 Regular Session, 2007, as applicable.

3 (d) The department may not reinstate a provisional license
4 or driver's license suspended under Subsection (a) unless the
5 person whose license was suspended applies to the department for
6 reinstatement.

7 (e) A person whose license is suspended under Subsection (a)
8 remains eligible to receive an occupational license under
9 Subchapter L or a hardship license under Section 521.223.

10 (f) For the purposes of this section, a person is convicted
11 of an offense regardless of whether the sentence is imposed or the
12 person is placed on community supervision for the offense under
13 Article 42.12, Code of Criminal Procedure.

14 SECTION 7. The change in law made by this Act applies only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 covered by the law in effect when the offense was committed, and the
18 former law is continued in effect for that purpose. For purposes of
19 this section, an offense was committed before the effective date of
20 this Act if any element of the offense was committed before that
21 date.

22 SECTION 8. This Act takes effect September 1, 2009.