
**Community Safety, Justice, & Reentry
Committee**

HB 1800

Brief Description: Concerning criminal penalties and restitution for graffiti.

Sponsors: Representatives Barkis, Donaghy, Eslick, Fey, Barnard, Robertson, Stokesbary, Chambers, Abbarno, Christian and McClintock.

Brief Summary of Bill

- Provides that a court may order a person convicted of Malicious Mischief in the third degree or Criminal Street Gang Tagging and Graffiti to complete community restitution in addition to other penalties or instead of incarceration.
- Grants the court discretion to order a person convicted of Malicious Mischief in the third degree or Criminal Street Gang Tagging and Graffiti to pay restitution or to clean up the damage, with prior permission of the legal owner or the agency managing the property.

Hearing Date: 1/25/24

Staff: Lena Langer (786-7192).

Background:

Malicious Mischief in the Third Degree.

A person commits the offense of Malicious Mischief in the third degree if the person:

- knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to Malicious Mischief in the first or second degree, which is physical damage to another's property in an amount exceeding \$750; or

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- writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by another person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to Malicious Mischief in the first or second degree.

Malicious Mischief in the third degree is a gross misdemeanor.

Criminal Street Gang Tagging and Graffiti.

A person commits the offense of Criminal Street Gang Tagging and Graffiti if the person commits Malicious Mischief in the third degree and the person has multiple current or prior convictions for Malicious Mischief in the third degree and the current offense or one of the current offenses is a criminal street gang-related offense. Criminal Street Gang Tagging and Graffiti is a gross misdemeanor.

A criminal street gang-related offense is defined as any felony or misdemeanor offense that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

- to gain admission, prestige, or promotion within the gang;
- to increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;
- to exact revenge or retribution for the gang or any member of the gang;
- to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;
- to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or
- to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to: Manufacturing, Delivering, or Selling any Controlled Substance; Arson; Trafficking in Stolen Property; Promoting Prostitution; Human Trafficking; Promoting Commercial Sexual Abuse of a Minor; or Promoting Pornography.

Graffiti and Tagging Abatement Grant.

In 2008 the Legislature required the Washington Association of Sheriffs and Police Chiefs to establish a grant program to assist local law enforcement agencies in funding graffiti and tagging abatement programs.

Alternatives to Total Confinement.

The Sentencing Reform Act allows the court to impose alternatives to sentences of total confinement. These alternatives are available for persons who have sentences of one year or less, and they may be ordered by the court at the time of sentencing. For persons who are convicted of nonviolent offenses, eight hours of community restitution may be substituted for one day of total confinement. The conversion is limited to 30 days. Thus, 30 days can be

converted to 240 hours of community restitution.

Restitution.

Generally, restitution is a specific sum of money ordered by the sentencing court to be paid to the court over a specified period of time as payment of damages. Restitution may be used to compensate victims or cover certain public costs for monetary harm arising out of a criminal offense. In the chapter authorizing restitution as an alternative to fines for criminal convictions, the restitution amount may not exceed double the amount of the person's gain or victim's loss from the commission of a crime.

Summary of Bill:

Graffiti is defined as defacing, damaging, or destroying public or private buildings, structures, facilities, natural features, or places by writing, painting, spraying, marking, or drawing with paint, ink, dye, or other substances.

The court may order a person convicted of Malicious Mischief in the third degree or Criminal Street Gang Tagging and Graffiti on state property to perform at least 24 hours of community restitution in addition to other penalties or instead of incarceration. The court may use any community restitution program available.

If a person is convicted of Malicious Mischief in the third degree or Criminal Street Gang Tagging and Graffiti, in addition to requiring at least 24 hours of community restitution, the court has discretion to:

- order community or clean-up restitution, instead of part or all of the incarceration sentence; and
- order the person to clean up the damage, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

When the court orders the person to complete community restitution, the restitution payment must be forwarded to the State Treasurer who must distribute it to the program for which the community restitution is performed. The court may select either the community restitution litter cleanup programs or the Waste Reduction, Recycling, and Litter Control Account. When the court does not order the person to complete community restitution, the restitution payment must be forwarded to the State Treasurer who must deposit it in the Graffiti and Tagging Abatement Grant Program, or a similar account, to be used solely for graffiti abatement and cleanup.

Appropriation: None.

Fiscal Note: Requested on January 17, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.