

HOUSE BILL REPORT

HB 1800

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to criminal penalties and restitution for graffiti.

Brief Description: Concerning criminal penalties and restitution for graffiti.

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

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/25/24, 1/30/24 [DPS].

Brief Summary of Substitute 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 at least 24 hours of community restitution, pay restitution, or clean up the damage with prior permission of the legal owner or the agency managing the property.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Lena Langer (786-7192).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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
- 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, 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 court may 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.

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. When restitution is authorized 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 Substitute 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 to:

- perform at least 24 hours of community restitution in addition to other penalties, using any community restitution program available; and
- comply with community or cleanup restitution, instead of part or all of the incarceration sentence.

The court may 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 a person to pay restitution in addition to performing 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 program 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.

Substitute Bill Compared to Original Bill:

The substitute bill:

- moves the provision authorizing the court to order a person who is convicted of Malicious Mischief in the third degree or Criminal Street Gang Tagging and Graffiti to perform at least 24 hours of community restitution to a new section of the chapter

- concerning Arson, Reckless Burning, and Malicious Mischief;
- provides that the 24 or more hours of community restitution may be ordered regardless of the location of the offense, rather than providing that the restitution may be ordered for offenses occurring on state property;
 - removes language providing that the 24 or more hours of community restitution may be imposed in lieu of incarceration; and
 - removes a specific reference to the community restitution for littering in state parks program, but otherwise retains language allowing the court to use any available community restitution program.
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Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 31, 2024.

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

Staff Summary of Public Testimony:

(In support) Graffiti is a growing problem. The problem is with accountability and having people face the consequences for their actions of tagging or graffiti. The idea behind the bill is that, back in the day, there used to be community service. Individuals who got into trouble would have to perform community service, such as cleaning up the park. This used to be a good deterrent for youth. The bill aims to use a similar model to address graffiti.

(Opposed) None.

Persons Testifying: Representative Andrew Barkis, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.