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**HOUSE BILL 1800**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Barkis, Donaghy, Eslick, Fey, Barnard, Robertson, Stokesbary, Chambers, Abbarno, Christian, and McClintock

AN ACT Relating to criminal penalties and restitution for graffiti; amending RCW 9.94A.680 and 9A.20.030; reenacting and amending RCW 9A.04.110; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  The legislature finds that an increase in graffiti and defacement of public and private property damages and detracts from the general enjoyment of community spaces. This act provides the court with more options for offenders to rectify their mistakes. The intent of this act is to discourage graffiti and other malicious mischief crimes by including community service hours or actual damage cleanup as a court-issued punishment. Adults are paying the fines for some youth, so the offender is not experiencing consequences that would lead to better behavior. Prosecutors are unlikely to recommend actual jail time for minor crimes. Therefore, picking up trash in state parks, scrubbing off paint, or doing other forms of community restitution provides a reformative opportunity. This act is building on policies that currently exist in the justice system with the expectation of better outcomes for all involved.

**Sec.**  RCW 9.94A.680 and 2009 c 227 s 1 are each amended to read as follows:

Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; ((~~and~~))

(3) For offenders convicted of nonviolent and nonsex offenses, the court may credit time served by the offender before the sentencing in an available county supervised community option and may authorize county jails to convert jail confinement to an available county supervised community option, may authorize the time spent in the community option to be reduced by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607; and

(4) For offenders convicted of malicious mischief in the third degree or criminal street gang tagging and graffiti located on state property, the court may order the offender to perform at least 24 hours of community restitution in addition to other penalties or in lieu of incarceration. The court may use any community restitution program available including, but not limited to, RCW 79A.05.050 or 72.09.260.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used.

**Sec.**  RCW 9A.04.110 and 2011 c 336 s 350 and 2011 c 166 s 2 are each reenacted and amended to read as follows:

In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4)(a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building," in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale, or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Graffiti" means 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;

(11) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

((~~(11)~~)) (12) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

((~~(12)~~)) (13) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;

((~~(13)~~)) (14) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

((~~(14)~~)) (15) "Omission" means a failure to act;

((~~(15)~~)) (16) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

((~~(16)~~)) (17) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

((~~(17)~~)) (18) "Person," "he or she," and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

((~~(18)~~)) (19) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

((~~(19)~~)) (20) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

((~~(20)~~)) (21) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

((~~(21)~~)) (22) "Projectile stun gun" means an electronic device that projects wired probes attached to the device that emit an electrical charge and that is designed and primarily employed to incapacitate a person or animal;

((~~(22)~~)) (23) "Property" means anything of value, whether tangible or intangible, real or personal;

((~~(23)~~)) (24) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

((~~(24)~~)) (25) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

((~~(25)~~)) (26) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

((~~(26)~~)) (27) "Strangulation" means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe;

((~~(27)~~)) (28) "Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe;

((~~(28)~~)) (29) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his or her health, safety, business, financial condition, or personal relationships;

((~~(29)~~)) )30) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

((~~(30)~~)) (31) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular.

**Sec.**  RCW 9A.20.030 and 1982 1st ex.s. c 47 s 12 are each amended to read as follows:

(1) If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. It shall be the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost.

(2) If a person commits malicious mischief in the third degree under RCW 9A.48.090 or criminal street gang tagging and graffiti under RCW 9A.48.105, in addition to the community restitution authorized in RCW 9.94A.680, the court has discretion to order community or clean-up restitution, in lieu of part or all of the incarceration sentence.

(a) 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.

(b) When the court orders community restitution under RCW 9.94A.680, the payment shall be forwarded to the state treasurer who shall distribute it to the program for which the restitution is performed. The court may select either the litter cleanup programs created under RCW 72.09.260 or the waste reduction, recycling, and litter control account created under RCW 70A.200.140.

(c) When the court does not order community restitution under RCW 9.94A.680, the restitution payment shall be forwarded to the state treasurer who shall deposit it in the graffiti and tagging abatement grant program in RCW 36.28A.210, or a similar account, to be used solely for graffiti abatement and cleanup.

(3) Notwithstanding any other provision of law, this section also applies to any corporation or joint stock association found guilty of any crime.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**