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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

Read first time 02/09/23. Referred to Committee on Community Safety, Justice, & Reentry.

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

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

6 NEW SECTION. **Sec. 1.** The legislature finds that an increase in  
7 graffiti and defacement of public and private property damages and  
8 detracts from the general enjoyment of community spaces. This act  
9 provides the court with more options for offenders to rectify their  
10 mistakes. The intent of this act is to discourage graffiti and other  
11 malicious mischief crimes by including community service hours or  
12 actual damage cleanup as a court-issued punishment. Adults are paying  
13 the fines for some youth, so the offender is not experiencing  
14 consequences that would lead to better behavior. Prosecutors are  
15 unlikely to recommend actual jail time for minor crimes. Therefore,  
16 picking up trash in state parks, scrubbing off paint, or doing other  
17 forms of community restitution provides a reformative opportunity.  
18 This act is building on policies that currently exist in the justice  
19 system with the expectation of better outcomes for all involved.

1       **Sec. 2.** RCW 9.94A.680 and 2009 c 227 s 1 are each amended to  
2 read as follows:

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

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

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

16       (3) For offenders convicted of nonviolent and nonsex offenses,  
17 the court may credit time served by the offender before the  
18 sentencing in an available county supervised community option and may  
19 authorize county jails to convert jail confinement to an available  
20 county supervised community option, may authorize the time spent in  
21 the community option to be reduced by earned release credit  
22 consistent with local correctional facility standards, and may  
23 require the offender to perform affirmative conduct pursuant to RCW  
24 9.94A.607; and

25       (4) For offenders convicted of malicious mischief in the third  
26 degree or criminal street gang tagging and graffiti located on state  
27 property, the court may order the offender to perform at least 24  
28 hours of community restitution in addition to other penalties or in  
29 lieu of incarceration. The court may use any community restitution  
30 program available including, but not limited to, RCW 79A.05.050 or  
31 72.09.260.

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

36       **Sec. 3.** RCW 9A.04.110 and 2011 c 336 s 350 and 2011 c 166 s 2  
37 are each reenacted and amended to read as follows:

38       In this title unless a different meaning plainly is required:

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

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

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

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

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

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

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

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

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

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

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

37 (10) "Graffiti" means defacing, damaging, or destroying public or  
38 private buildings, structures, facilities, natural features, or  
39 places by writing, painting, spraying, marking, or drawing with  
40 paint, ink, dye, or other substances;

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

4        ~~((11))~~ (12) "Judge" includes every judicial officer authorized  
5 alone or with others, to hold or preside over a court;

6        ~~((12))~~ (13) "Malice" and "maliciously" shall import an evil  
7 intent, wish, or design to vex, annoy, or injure another person.  
8 Malice may be inferred from an act done in willful disregard of the  
9 rights of another, or an act wrongfully done without just cause or  
10 excuse, or an act or omission of duty betraying a willful disregard  
11 of social duty;

12        ~~((13))~~ (14) "Officer" and "public officer" means a person  
13 holding office under a city, county, or state government, or the  
14 federal government who performs a public function and in so doing is  
15 vested with the exercise of some sovereign power of government, and  
16 includes all assistants, deputies, clerks, and employees of any  
17 public officer and all persons lawfully exercising or assuming to  
18 exercise any of the powers or functions of a public officer;

19        ~~((14))~~ (15) "Omission" means a failure to act;

20        ~~((15))~~ (16) "Peace officer" means a duly appointed city,  
21 county, or state law enforcement officer;

22        ~~((16))~~ (17) "Pecuniary benefit" means any gain or advantage in  
23 the form of money, property, commercial interest, or anything else  
24 the primary significance of which is economic gain;

25        ~~((17))~~ (18) "Person," "he or she," and "actor" include any  
26 natural person and, where relevant, a corporation, joint stock  
27 association, or an unincorporated association;

28        ~~((18))~~ (19) "Place of work" includes but is not limited to all  
29 the lands and other real property of a farm or ranch in the case of  
30 an actor who owns, operates, or is employed to work on such a farm or  
31 ranch;

32        ~~((19))~~ (20) "Prison" means any place designated by law for the  
33 keeping of persons held in custody under process of law, or under  
34 lawful arrest, including but not limited to any state correctional  
35 institution or any county or city jail;

36        ~~((20))~~ (21) "Prisoner" includes any person held in custody  
37 under process of law, or under lawful arrest;

38        ~~((21))~~ (22) "Projectile stun gun" means an electronic device  
39 that projects wired probes attached to the device that emit an

1 electrical charge and that is designed and primarily employed to  
2 incapacitate a person or animal;

3 ~~((22))~~ (23) "Property" means anything of value, whether  
4 tangible or intangible, real or personal;

5 ~~((23))~~ (24) "Public servant" means any person other than a  
6 witness who presently occupies the position of or has been elected,  
7 appointed, or designated to become any officer or employee of  
8 government, including a legislator, judge, judicial officer, juror,  
9 and any person participating as an advisor, consultant, or otherwise  
10 in performing a governmental function;

11 ~~((24))~~ (25) "Signature" includes any memorandum, mark, or sign  
12 made with intent to authenticate any instrument or writing, or the  
13 subscription of any person thereto;

14 ~~((25))~~ (26) "Statute" means the Constitution or an act of the  
15 legislature or initiative or referendum of this state;

16 ~~((26))~~ (27) "Strangulation" means to compress a person's neck,  
17 thereby obstructing the person's blood flow or ability to breathe, or  
18 doing so with the intent to obstruct the person's blood flow or  
19 ability to breathe;

20 ~~((27))~~ (28) "Suffocation" means to block or impair a person's  
21 intake of air at the nose and mouth, whether by smothering or other  
22 means, with the intent to obstruct the person's ability to breathe;

23 ~~((28))~~ (29) "Threat" means to communicate, directly or  
24 indirectly the intent:

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

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

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

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

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

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

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

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

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

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

11 (~~(29)~~) 30 "Vehicle" means a "motor vehicle" as defined in the  
12 vehicle and traffic laws, any aircraft, or any vessel equipped for  
13 propulsion by mechanical means or by sail;

14 (~~(30)~~) 31 Words in the present tense shall include the future  
15 tense; and in the masculine shall include the feminine and neuter  
16 genders; and in the singular shall include the plural; and in the  
17 plural shall include the singular.

18 **Sec. 4.** RCW 9A.20.030 and 1982 1st ex.s. c 47 s 12 are each  
19 amended to read as follows:

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

1 "gain" or "loss" refer to the amount of money or the value of  
2 property or services gained or lost.

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

9 (a) The court may order the person to clean up the damage, with  
10 prior permission of the legal owner or, in the case of public  
11 property, of the agency managing the property.

12 (b) When the court orders community restitution under RCW  
13 9.94A.680, the payment shall be forwarded to the state treasurer who  
14 shall distribute it to the program for which the restitution is  
15 performed. The court may select either the litter cleanup programs  
16 created under RCW 72.09.260 or the waste reduction, recycling, and  
17 litter control account created under RCW 70A.200.140.

18 (c) When the court does not order community restitution under RCW  
19 9.94A.680, the restitution payment shall be forwarded to the state  
20 treasurer who shall deposit it in the graffiti and tagging abatement  
21 grant program in RCW 36.28A.210, or a similar account, to be used  
22 solely for graffiti abatement and cleanup.

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

26 NEW SECTION. Sec. 5. If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected.

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