
SUBSTITUTE HOUSE BILL 1800

State of Washington

68th Legislature

2024 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Barkis, Donaghy, Eslick, Fey, Barnard, Robertson, Stokesbary, Chambers, Abbarno, Christian, and McClintock)

1 AN ACT Relating to criminal penalties and restitution for
2 graffiti; amending RCW 9A.20.030; reenacting and amending RCW
3 9A.04.110; adding a new section to chapter 9A.48 RCW; creating a new
4 section; and prescribing 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 reformatory 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 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.48
2 RCW to read as follows:

3 For offenders convicted of malicious mischief in the third degree
4 or criminal street gang tagging and graffiti, the court may order the
5 offender to perform at least 24 hours of community restitution in
6 addition to other penalties. The court may use any community
7 restitution program available including, but not limited to, RCW
8 72.09.260.

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

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

- 12 (1) "Acted" includes, where relevant, omitted to act;
13 (2) "Actor" includes, where relevant, a person failing to act;
14 (3) "Benefit" is any gain or advantage to the beneficiary,
15 including any gain or advantage to a third person pursuant to the
16 desire or consent of the beneficiary;

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

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

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

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

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

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

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

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

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

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

17 (~~(11)~~) (12) "Judge" includes every judicial officer authorized
18 alone or with others, to hold or preside over a court;

19 (~~(12)~~) (13) "Malice" and "maliciously" shall import an evil
20 intent, wish, or design to vex, annoy, or injure another person.
21 Malice may be inferred from an act done in willful disregard of the
22 rights of another, or an act wrongfully done without just cause or
23 excuse, or an act or omission of duty betraying a willful disregard
24 of social duty;

25 (~~(13)~~) (14) "Officer" and "public officer" means a person
26 holding office under a city, county, or state government, or the
27 federal government who performs a public function and in so doing is
28 vested with the exercise of some sovereign power of government, and
29 includes all assistants, deputies, clerks, and employees of any
30 public officer and all persons lawfully exercising or assuming to
31 exercise any of the powers or functions of a public officer;

32 (~~(14)~~) (15) "Omission" means a failure to act;

33 (~~(15)~~) (16) "Peace officer" means a duly appointed city,
34 county, or state law enforcement officer;

35 (~~(16)~~) (17) "Pecuniary benefit" means any gain or advantage in
36 the form of money, property, commercial interest, or anything else
37 the primary significance of which is economic gain;

38 (~~(17)~~) (18) "Person," "he or she," and "actor" include any
39 natural person and, where relevant, a corporation, joint stock
40 association, or an unincorporated association;

1 ~~((18))~~ (19) "Place of work" includes but is not limited to all
2 the lands and other real property of a farm or ranch in the case of
3 an actor who owns, operates, or is employed to work on such a farm or
4 ranch;

5 ~~((19))~~ (20) "Prison" means any place designated by law for the
6 keeping of persons held in custody under process of law, or under
7 lawful arrest, including but not limited to any state correctional
8 institution or any county or city jail;

9 ~~((20))~~ (21) "Prisoner" includes any person held in custody
10 under process of law, or under lawful arrest;

11 ~~((21))~~ (22) "Projectile stun gun" means an electronic device
12 that projects wired probes attached to the device that emit an
13 electrical charge and that is designed and primarily employed to
14 incapacitate a person or animal;

15 ~~((22))~~ (23) "Property" means anything of value, whether
16 tangible or intangible, real or personal;

17 ~~((23))~~ (24) "Public servant" means any person other than a
18 witness who presently occupies the position of or has been elected,
19 appointed, or designated to become any officer or employee of
20 government, including a legislator, judge, judicial officer, juror,
21 and any person participating as an advisor, consultant, or otherwise
22 in performing a governmental function;

23 ~~((24))~~ (25) "Signature" includes any memorandum, mark, or sign
24 made with intent to authenticate any instrument or writing, or the
25 subscription of any person thereto;

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

28 ~~((26))~~ (27) "Strangulation" means to compress a person's neck,
29 thereby obstructing the person's blood flow or ability to breathe, or
30 doing so with the intent to obstruct the person's blood flow or
31 ability to breathe;

32 ~~((27))~~ (28) "Suffocation" means to block or impair a person's
33 intake of air at the nose and mouth, whether by smothering or other
34 means, with the intent to obstruct the person's ability to breathe;

35 ~~((28))~~ (29) "Threat" means to communicate, directly or
36 indirectly the intent:

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

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

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

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

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

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

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

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

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

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

22 ~~((+29))~~ 30 "Vehicle" means a "motor vehicle" as defined in the
23 vehicle and traffic laws, any aircraft, or any vessel equipped for
24 propulsion by mechanical means or by sail;

25 ~~((+30))~~ 31 Words in the present tense shall include the future
26 tense; and in the masculine shall include the feminine and neuter
27 genders; and in the singular shall include the plural; and in the
28 plural shall include the singular.

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

31 (1) If a person has gained money or property or caused a victim
32 to lose money or property through the commission of a crime, upon
33 conviction thereof or when the offender pleads guilty to a lesser
34 offense or fewer offenses and agrees with the prosecutor's
35 recommendation that the offender be required to pay restitution to a
36 victim of an offense or offenses which are not prosecuted pursuant to
37 a plea agreement, the court, in lieu of imposing the fine authorized
38 for the offense under RCW 9A.20.020, may order the defendant to pay
39 an amount, fixed by the court, not to exceed double the amount of the

1 defendant's gain or victim's loss from the commission of a crime.
2 Such amount may be used to provide restitution to the victim at the
3 order of the court. It shall be the duty of the prosecuting attorney
4 to investigate the alternative of restitution, and to recommend it to
5 the court, when the prosecuting attorney believes that restitution is
6 appropriate and feasible. If the court orders restitution, the court
7 shall make a finding as to the amount of the defendant's gain or
8 victim's loss from the crime, and if the record does not contain
9 sufficient evidence to support such finding the court may conduct a
10 hearing upon the issue. For purposes of this section, the terms
11 "gain" or "loss" refer to the amount of money or the value of
12 property or services gained or lost.

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

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

22 (b) When the court orders community restitution under section 2
23 of this act, the payment shall be forwarded to the state treasurer
24 who shall distribute it to the program for which the restitution is
25 performed. The court may select either the litter cleanup programs
26 created under RCW 72.09.260 or the waste reduction, recycling, and
27 litter control account created under RCW 70A.200.140.

28 (c) When the court does not order community restitution under
29 section 2 of this act, the restitution payment shall be forwarded to
30 the state treasurer who shall deposit it in the graffiti and tagging
31 abatement grant program in RCW 36.28A.210, or a similar account, to
32 be used solely for graffiti abatement and cleanup.

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

36 NEW SECTION. Sec. 5. If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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