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## **House Committee on Criminal Jurisprudence**

**Charge #5:** *Examine the current pecuniary loss thresholds associated with graffiti offenses. Study the costs of enhancing the penalties associated with the offense of graffiti, as well as a study of pretrial diversion programs that exist in other states and are specific to persons convicted of graffiti offenses. Study the existing Graffiti Abatement Programs in Texas.*

Dear Members of the Committee,

My name is Jorge Renaud. I am a Policy Analyst for the Texas Criminal Justice Coalition (TCJC). Thank you for allowing me this opportunity to present invited testimony on current penalties for graffiti offenses and associated abatement programs.

TCJC has been closely monitoring efforts to further criminalize the offense of graffiti. While understanding the economic costs that graffiti crimes impose on Texas municipalities, we believe that current approaches to graffiti impose costs to individuals and communities that are, in the long run, even more detrimental to public safety. Although these costs are perhaps not as easily quantifiable, they will continue to pose harmful consequences until Texas takes positive steps to identify and implement alternative strategies.

The current, overly punitive approach to graffiti has the following ramifications:

- It leaves individuals with criminal records that have lifelong negative consequences, including barriers to obtaining housing, employment, and educational opportunities.
- It causes tax burdens on the communities that must support these individuals in the form of social welfare programs.
- It provides little, if any, incentive to individuals to change their behavior because it fails to offer any recourse other than jail time and fines.
- It does not address the needs of property owners seeking to restore their property, nor does it take into account their desire to implement alternative methods of restitution.

This testimony explores the use of alternative approaches to graffiti offenses in Texas. It features two Texas cities that use a rapid-response model to address graffiti, which limits the gratification that a graffitist experiences when his or her activity is not quickly removed, and which has drastically reduced the instances of graffiti in those cities. This testimony also looks at a model program in Pennsylvania, which offers those convicted of graffiti an opportunity to take part in art initiatives, which have resulted in a beautification of that city and have helped provide an economic boost. Finally, it suggests that the Penal Code incorporate a Class C misdemeanor option that will recognize the often-trivial offenses of graffiti and offer a minimal but meaningful punishment to graffitists, most of whom are juveniles and do not have the means to pay harsh restitution.

## GRAFFITI: A HISTORY AND BACKGROUND

Graffiti is defined as any marking, etching, or painting that defaces public or private property without the owner's permission. Despite the common belief that graffiti is associated with gangs, it is found in all locales and jurisdictions, and in fact only a small portion of all graffiti is done by gang members.<sup>1</sup>

Graffiti costs some Texas cities millions of dollars<sup>2</sup> in cleanup each year. It may be a precursor to other crimes, in what is referred to as the "broken windows" theory<sup>3</sup> – the idea that ignoring low-level vandalism or community decay inevitably leads to larger, more dangerous crime and deeper, more intractable community problems. While a single incident of graffiti may not seem important or offensive, graffiti in one area almost inevitably attracts more. Although some graffiti may have beauty, much of it is simple and ugly, and some of it consists of racist diatribes or offensive language directed at different religious faiths.

Because of its increasing prevalence and the rising costs associated with graffiti cleanup, the focus of some Texas lawmakers has been to push for increasingly punitive laws against graffiti. However, increasing the penalties for graffiti offenses is unlikely to be effective. Few graffitiists are caught, and much of it is not reported to the police. Additionally, because of the undeniable beauty and originality of an occasional graffiti piece, many people do not see graffiti as a crime but as the artistic expression of a misunderstood and marginalized population, and it may be viewed as legitimate street art.

## LEGAL REPERCUSSIONS & TAXPAYER COSTS POSED BY GRAFFITI PENALTIES

The laws addressing graffiti in Texas are scattered throughout different codes. The Penal Code defines the offense and mandates levels of punishment for adults, which can range from Class B misdemeanors to 1<sup>st</sup> degree felonies;<sup>4</sup> the Family Code sets out punishment for youth;<sup>5</sup> and the Local Government Code defines whose responsibility it is to remove graffiti.<sup>6</sup>

From 2009 through 2011, Texas counties sentenced 22 individuals to state jail for graffiti, for a cumulative sentence length totaling 9,475 days.<sup>7</sup> At an estimated cost per day of \$43.03,<sup>8</sup> **the cost to the state was \$419,327**. This figure does not contain the costs of investigation, arrest, pretrial detention, and trial. Neither does this include costs for the arrest, detention, and prosecution of juveniles, whose pre-adjudication costs range from a low of \$70 per day in Starr County to a high of \$152.34 in Harris County.<sup>9</sup>

## A LOOK AT OTHER APPROACHES TO ADDRESSING GRAFFITI

How should cities deter and punish individuals, mostly youth, who often band together in crews intent on splashing their individualized markers on public and private property, other than through simple prosecution and incarceration, with its high costs and negative consequences? As with any other crimes, there are two possible approaches: **Prevention and eradication**.

***Prevention Through Diversion into Arts Programming:*** Philadelphia has pioneered the diversion of adjudicated graffitiists into mural making, allowing them to express their artistic impulses and be recognized as artists. Beginning in 1984, the city began offering youth charged with graffiti a chance to conceive of and assist in painting murals that celebrated their neighborhoods' history. The resulting murals were demonstrated to be one of the biggest economic boosts to Philadelphia, and the beauty and variety of the murals were recognized as crucial to the development of vibrant commercial corridors in Philadelphia.<sup>10</sup> A report on this strategy recommended more efforts like the Mural Arts Program, calling them "effective and cost-efficient ways of replacing eyesores with symbols of care."<sup>11</sup>

Other studies have pointed to the positive outcomes of involving at-risk youth in arts programs, regardless of whether they result in murals. A 2006 report found that “Youth in the juvenile justice system who have participated in art programs display important pro-social and mental health characteristics, including greater self-efficacy, the ability to express themselves, improved attitudes toward school, and appropriate behavior and communication with adults and peers.”<sup>12</sup>

***Rapid Response Eradication:*** The “broken windows” theory alludes to the idea that graffiti, like broken windows and abandoned buildings, gives a perception of blight and decaying neighborhoods. This calls for the rapid removal of graffiti, thus reducing the opportunity for the graffitist to gain satisfaction from his or her act.<sup>13</sup> Corpus Christi<sup>14</sup> and Houston<sup>15</sup> have invested in a “rapid response”<sup>16</sup> approach to graffiti that has had success. This strategy involves two crucial components: (1) a community-wide campaign, where citizens detect and report graffiti as soon as it occurs, and (2) the ability of the community to respond to the graffiti within 24 to 48 hours to remove it as quickly as possible. More specifically, these efforts include neighborhood education, hotlines, and referrals of probationers as cleanup crews from local probation departments.<sup>17</sup>

In Corpus Christi, the Graffiti Eradication Program is run by the City Waste Department and removes highly visible graffiti – prioritizing graffiti in public areas and around schools – within 24 hours. Lawrence Mikolajczyk, the director of that department, says graffiti writing has dropped “tremendously” since the program began in 2008.<sup>18</sup> The person in charge of the Greater East End District Management in Harris County points to even greater effects on graffiti in that area; Martin Chavez, who is now Director of Constituent Services for the District but was the first Director of Graffiti Abatement when that program began in 2001, says the program has cleaned up 141,488 graffiti sites since its inception.

Mr. Chavez also extolls the practice of assigning probationers who have been convicted of graffiti to clean up after themselves: “We have people who were assigned here from the Harris County probation department, and I think it really makes an impact on them when they see exactly the work and cost of what they do.”<sup>19</sup> Chavez goes on to say that gang activity in the district has dipped; he attributes some of that to the fact that the District cleans up gang-related taunting immediately, and “they don’t get to see their names crossed out.”<sup>20</sup>

### **COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTIONS**

- **Create and seek funding for a pretrial diversion program for individuals who commit graffiti offenses, requiring community service and victim restitution, for long-term reductions in recidivism and its associated costs.** Participation in a deferred prosecution program, as based on the consent of the district attorney, should require community service, including graffiti removal where possible, and could involve participation in outreach education focused on graffiti prevention and eradication, youth mentoring in art programs, mural painting, or other available community service opportunities. Furthermore, successful completion of the program could result in dismissal of the charges. This will give a fair chance to individuals who have taken responsibility for their actions, helping them avoid the reentry barriers typically associated with a criminal record.
- **Create a new, minor offense level (a Class C misdemeanor) for graffiti that causes up to \$200 worth of damage.** Currently, all graffiti up to \$500 worth of damage is a Class B misdemeanor, which brings with it potential county jail time, county spending on indigent defense, and the aforementioned collateral consequences.
- **Adjust value amounts for certain graffiti offenses.** Current offense thresholds for graffiti offenses were set in 1993 and do not reflect two decades of inflation. Consequently, the penalty grades for graffiti do not appropriately correspond to the value of the property that has been damaged. In other words, what

amounted to a Class C misdemeanor 20 years ago may now constitute a jail-able Class B misdemeanor – a de facto “criminal inflation.” Amending the threshold offense amounts for graffiti will save taxpayer dollars otherwise needlessly spent on incarceration costs for increasingly low-level offenses.

Again, thank you for the opportunity to present alternative strategies for addressing graffiti Texas. TCJC urges you to support policies that provide property owners relief, lower the burden on taxpayers, and target the root causes of this costly behavior through behavioral programming.

## Citations

<sup>1</sup> Thompson, C. & Hills, R. . “Congress Paper on Graffiti Vandalism in America – Shaping the Municipal Response”. *Paper presented to World Jurist Association’s 24<sup>th</sup> Biennial Congress on the Law of the World*. Oct. 23-28, 2011. Available at <file:///J:/Policy%20Center/2015%20Legislative%20Session%2084th/Bill%20Folders/Graffiti/municipal-responses-to-graffiti-vandalism.htm>

<sup>2</sup> Julia Narum, Child Development Program Supervisor, City of Austin Health and Human Services {dedicated budget of \$500,000 to \$600,000 yearly for graffiti}, telephone conversation with Jorge Renaud, TCJC, Oct. 22, 2012; Lisa McKenzie, Neighborhood Services Coordinator, City of San Antonio [dedicated budget of \$1,008,000 in 2012], telephone conversation with Jorge Renaud, TCJC, Oct. 22 2012; Jerry McDowel, City of Fort Worth Parks Department [dedicated budget of \$464,000 in 2012], telephone conversation with Jorge Renaud, TCJC, Nov. 26, 2012.

<sup>3</sup> Kelling, G. L., & Wilson, J. Q. (1982). “Broken windows: The police and neighborhood safety.” *The Atlantic*. Available at [http://www.manhattan-institute.org/pdf/\\_atlantic\\_monthly-broken\\_windows.pdf](http://www.manhattan-institute.org/pdf/_atlantic_monthly-broken_windows.pdf)

<sup>4</sup> TEX. PENAL. CODE § 28.08.

<sup>5</sup> TEX. FAM. CODE §.54.046.

<sup>6</sup> TEX. LOCAL GOV. CODE § 250.006.

<sup>7</sup> Texas Department of Criminal Justice (TDCJ). Information received via Freedom of Information Act, Nov. 12, 2012.

<sup>8</sup> Legislative Budget Board, “Criminal Justice Uniform Cost Project.” Nov. 2011, pg. 8. Available at [http://www.lbb.state.tx.us/Public\\_Safety\\_Criminal\\_Justice/Uniform\\_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf](http://www.lbb.state.tx.us/Public_Safety_Criminal_Justice/Uniform_Cost/Criminal%20Justice%20Uniform%20Cost%20Report%20Fiscal%20Years%202010%20to%202012.pdf)

<sup>9</sup> Texas Criminal Justice Coalition, “Community Solutions for Youth in Trouble.” Appendix B, County Data Sheets. Report issued Oct. 2012. Available at <http://www.texascjc.org/sites/default/files/uploads/Community%20Solutions%20for%20Youth%20%28Oct%202012%29.pdf>

<sup>10</sup> “Commercial Corridors: A strategic investment framework for Philadelphia – Executive Summary” March 2009. Pg. 7. Available at [http://www.econsult.com/articles/031009\\_Exec\\_Sum.pdf](http://www.econsult.com/articles/031009_Exec_Sum.pdf)

<sup>11</sup> Ibid, pg. 9.

<sup>12</sup> Anderson, S., Becker, K., & Walch, N. “The Power of Art: The Arts as an Effective Intervention Strategy for At-Risk Youth.” Prepared for the California Endowment. Pg. 25. Available at

[http://www.calendow.org/uploadedFiles/Publications/By\\_Topic/Disparities/General/The%20Power%20of%20Art.pdf](http://www.calendow.org/uploadedFiles/Publications/By_Topic/Disparities/General/The%20Power%20of%20Art.pdf)

<sup>13</sup> Weisel, D. L.. (2004). “Graffiti: A problem-oriented guide for police.” U.S. Department of Justice, Office of Community Oriented Policing Services.” Available at <http://www.popcenter.org/problems/PDFs/Graffiti.pdf>

<sup>14</sup> Lawrence Mikolajczyk, Director of Solid Waste Dept., City of Corpus Christi, in telephone conversation with Jorge Renaud, TCJC, Sept. 30, 2014, discussing the high-priority, rapid-response model initiated in 2008.

<sup>15</sup> Martin Chavez, Director, Constituent Services, Greater East End District Management, in telephone conversation with Jorge Renaud, TCJC, Oct. 1, 2014, discussing the program which initiated in 2001. Program details available at <http://www.greatereastend.com/graffiti-abatement>.

<sup>16</sup> C. Thompson & R. Hills, *Congress Paper on Graffiti Vandalism in America – Shaping the Municipal Response*, Paper presented to World Jurist Association’s 24<sup>th</sup> Biennial Congress on the Law of the World, Oct. 23-28, 2011.

<sup>17</sup> Telephone conversations with Lawrence Mikolajczyk and Martin Chavez.

<sup>18</sup> Telephone conversation with Lawrence Mikolajczyk.

<sup>19</sup> Telephone conversation with Martin Chavez.

<sup>20</sup> Ibid.