

AMENDED IN ASSEMBLY JANUARY 4, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 498

Introduced by Assembly Member Alejo

February 15, 2011

~~An act relating to local government.~~ *An act to amend Sections 594, 594.3, and 594.4 of, and to add Section 594.9 to, the Penal Code, and to amend Section 13202.6 of the Vehicle Code, relating to graffiti.*

LEGISLATIVE COUNSEL'S DIGEST

AB 498, as amended, Alejo. ~~Local government: graffiti abatement.~~ *Graffiti offenses: penalties: abatement program fine: driver's license: suspension.*

(1) Existing law provides that every person who maliciously commits any act to deface, damage, or destroy any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism. Existing law provides that any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted, or a cemetery is guilty of a crime. Existing law also provides that any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense.

Existing law requires a court, upon conviction of any person under those provisions for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, when appropriate and feasible,

in addition to any other punishment that the court may impose in the form of a fine or imprisonment, or both, to order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year.

This bill would, in addition to the punishment imposed under the above provisions, require the court to impose a \$30 graffiti abatement program fine for deposit into the Graffiti Abatement Program Fund, which the bill would create in the State Treasury. The bill would require, upon appropriation by the Legislature, that the moneys in the fund be allocated to city and county graffiti abatement programs in proportion to the number of convictions occurring in each city or county that has a graffiti abatement program.

(2) Existing law requires the court, for every conviction of a person for a violation of offenses described in paragraph (1), to suspend the person's driving privilege for not more than 2 years, except when the court finds that a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment, school, or medically related purposes. Existing law also requires the court, if the person convicted does not yet have the privilege to drive, to order the Department of Motor Vehicles to delay issuing the privilege to drive for not less than one year nor more than 3 years subsequent to the time the person becomes legally eligible to drive. Existing law, if there is no further conviction for violating the provisions of paragraph (1) in a 12-month period after the conviction, authorizes the court, upon petition of the person affected, to modify the order imposing the delay of the privilege.

This bill would delete the exceptions from these provisions and the court's discretion to modify the order imposing the delay of a person's driving privilege.

~~Existing law authorizes the legislative body of a city, county, or city and county to provide for the summary abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the minor or other person creating, causing, or committing the nuisance, and by ordinance, as specified.~~

~~This bill would express the intent of the Legislature to enact legislation that would address graffiti abatement.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 594 of the Penal Code is amended to
2 read:

3 594. (a) ~~Every~~(1) A person who maliciously commits any of
4 the following acts with respect to ~~any~~ real or personal property not
5 his or her own, in cases other than those specified by state law, is
6 guilty of vandalism:

7 ~~(1)~~
8 (A) Defaces with graffiti or other inscribed material.

9 ~~(2)~~
10 (B) Damages.

11 ~~(3)~~
12 (C) Destroys.

13 ~~Whenever~~
14 (2) *If* a person violates this subdivision with respect to real
15 property, vehicles, signs, fixtures, furnishings, or property
16 belonging to ~~any~~ a public entity, as defined by Section 811.2 of
17 the Government Code, or the federal government, it shall be a
18 permissive inference that the person neither owned the property
19 nor had the permission of the owner to deface, damage, or destroy
20 the property.

21 (b) (1) If the amount of defacement, damage, or destruction is
22 four hundred dollars (\$400) or more, vandalism is punishable by
23 imprisonment pursuant to subdivision (h) of Section 1170, or in a
24 county jail not exceeding one year, or by a fine of not more than
25 ten thousand dollars (\$10,000), or if the amount of defacement,
26 damage, or destruction is ten thousand dollars (\$10,000) or more,
27 by a fine of not more than fifty thousand dollars (\$50,000), or by
28 both that fine and imprisonment.

29 (2) (A) If the amount of defacement, damage, or destruction is
30 less than four hundred dollars (\$400), vandalism is punishable by
31 imprisonment in a county jail not exceeding one year, or by a fine
32 of not more than one thousand dollars (\$1,000), or by both that
33 fine and imprisonment.

34 (B) If the amount of defacement, damage, or destruction is less
35 than four hundred dollars (\$400), and the defendant has been

1 previously convicted of vandalism or affixing graffiti or other
 2 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,
 3 or 640.7, vandalism is punishable by imprisonment in a county
 4 jail for not more than one year, or by a fine of not more than five
 5 thousand dollars (\$5,000), or by both that fine and imprisonment.

6 (c) Upon conviction ~~of any person under this section~~ for acts
 7 of vandalism consisting of defacing property with graffiti or other
 8 inscribed materials, the court shall, when appropriate and feasible,
 9 in addition to any punishment imposed under subdivision (b), order
 10 the defendant to clean up, repair, or replace the damaged property
 11 himself or herself, or order the defendant, and his or her parents
 12 or guardians if the defendant is a minor, to keep the damaged
 13 property or another specified property in the community free of
 14 graffiti for up to one year. Participation of a parent or guardian is
 15 not required under this subdivision if the court deems this
 16 participation to be detrimental to the defendant, or if the parent or
 17 guardian is a single parent who must care for young children. If
 18 the court finds that graffiti cleanup is inappropriate, the court shall
 19 consider other types of community service, ~~where~~ if feasible.

20 (d) If a minor is personally unable to pay a fine levied for acts
 21 prohibited by this section, the parent of that minor shall be liable
 22 for payment of the fine. A court may waive payment of the fine,
 23 or any part thereof, by the parent upon a finding of good cause.

24 (e) *Upon conviction of a person under this section, the court*
 25 *shall comply with the provisions of Section 13202.6 of the Vehicle*
 26 *Code, if applicable.*

27 (e)

28 (f) As used in this section, the term “graffiti or other inscribed
 29 material” includes any unauthorized inscription, word, figure,
 30 mark, or design, that is written, marked, etched, scratched, drawn,
 31 or painted on real or personal property.

32 (f)

33 (g) The court may order ~~any a~~ person ordered to perform
 34 community service or graffiti removal pursuant to ~~paragraph (1)~~
 35 ~~of subdivision (c) to undergo counseling.~~

36 ~~(g) This section shall become operative on January 1, 2002.~~

37 SEC. 2. Section 594.3 of the Penal Code is amended to read:
 38 594.3. (a) ~~Any~~ A person who knowingly commits any act of
 39 vandalism to a church, synagogue, mosque, temple, building owned
 40 and occupied by a religious educational institution, or other place

1 primarily used as a place of worship where religious services are
2 regularly conducted or a cemetery is guilty of a crime punishable
3 by imprisonment in a county jail for not exceeding one year or
4 imprisonment pursuant to subdivision (h) of Section 1170.

5 (b) ~~Any~~A person who knowingly commits any act of vandalism
6 to a church, synagogue, mosque, temple, building owned and
7 occupied by a religious educational institution, or other place
8 primarily used as a place of worship where religious services are
9 regularly conducted or a cemetery, ~~which~~ *that* is shown to have
10 been a hate crime and to have been committed for the purpose of
11 intimidating and deterring persons from freely exercising their
12 religious beliefs, is guilty of a felony punishable by imprisonment
13 pursuant to subdivision (h) of Section 1170.

14 (c) *Upon conviction of a person under this section, the court*
15 *shall comply with the provisions of Section 13202.6 of the Vehicle*
16 *Code, if applicable.*

17 (e)

18 (d) For purposes of this section, “hate crime” has the same
19 meaning as Section 422.55.

20 *SEC. 3. Section 594.4 of the Penal Code is amended to read:*

21 594.4. (a) ~~Any~~A person who willfully and maliciously injects
22 into or throws upon, or otherwise defaces, damages, destroys, or
23 contaminates, any structure with butyric acid, or any other similar
24 noxious or caustic chemical or substance, is guilty of a public
25 offense, punishable by imprisonment pursuant to subdivision (h)
26 of Section 1170 or in a county jail not exceeding 6 months, by a
27 fine as specified in subdivision (b), or by both that imprisonment
28 and fine.

29 (b) (1) If the amount of the defacement, damage, destruction,
30 or contamination is fifty thousand dollars (\$50,000) or more, by
31 a fine of not more than fifty thousand dollars (\$50,000).

32 (2) If the amount of the defacement, damage, destruction, or
33 contamination is five thousand dollars (\$5,000) or more, but less
34 than fifty thousand dollars (\$50,000), by a fine of not more than
35 ten thousand dollars (\$10,000).

36 (3) If the amount of defacement, damage, destruction, or
37 contamination is nine hundred fifty dollars (\$950) or more, but
38 less than five thousand dollars (\$5,000), by a fine of not more than
39 five thousand dollars (\$5,000).

1 (4) If the amount of the defacement, damage, destruction, or
2 contamination is less than nine hundred fifty dollars (\$950), by a
3 fine of not more than one thousand dollars (\$1,000).

4 (c) Upon conviction of a person under this section, the court
5 shall comply with the provisions of Section 13202.6 of the Vehicle
6 Code, if applicable.

7 (e)
8 (d) For purposes of this section, “structure” includes any house
9 or other building being used at the time of the offense for a
10 dwelling or for commercial purposes.

11 SEC. 4. Section 594.9 is added to the Penal Code, to read:
12 594.9. (a) The Graffiti Abatement Program Fund is hereby
13 created in the State Treasury. Upon conviction for a violation of
14 Section 594, 594.3, or 594.4, the court shall impose a fine of thirty
15 dollars (\$30) for deposit into the fund. The moneys in the fund,
16 upon appropriation by the Legislature, shall be allocated to city
17 and county graffiti abatement programs in proportion to the
18 number of convictions for violations of Section 594, 594.3, or 594.4
19 occurring in each city or county that has a graffiti abatement
20 program.

21 (b) As used in this section, “graffiti abatement program” means
22 a program adopted by a city, county, or city and county by
23 resolution or ordinance that provides for the administration and
24 financing of graffiti removal, community education on the
25 prevention of graffiti, and enforcement of graffiti laws.

26 SEC. 5. Section 13202.6 of the Vehicle Code is amended to
27 read:

28 13202.6. (a) (1) For every a conviction of a person for a
29 violation of Section 594, 594.3, or 594.4 of the Penal Code,
30 committed while the person was 13 years of age or older, the court
31 shall suspend the person’s driving privilege for not more than two
32 years, ~~except when the court finds that a personal or family~~
33 ~~hardship exists that requires the person to have a driver’s license~~
34 ~~for his or her own, or a member of his or her family’s, employment,~~
35 ~~school, or medically related purposes.~~ If the person convicted does
36 not yet have the privilege to drive, the court shall order the
37 department to delay issuing the privilege to drive for not less than
38 one year nor more than three years subsequent to the time the
39 person becomes legally eligible to drive. ~~However, if there is no~~
40 ~~further conviction for violating Section 594, 594.3, or 594.4 of the~~

1 ~~Penal Code in a 12-month period after the conviction, the court,~~
2 ~~upon petition of the person affected, may modify the order~~
3 ~~imposing the delay of the privilege. For each successive *subsequent*~~
4 ~~offense, the court shall suspend the person's driving privilege for~~
5 ~~those possessing a *driver's* license or delay the eligibility for those~~
6 ~~not in possession of a *driver's* license at the time of their conviction~~
7 ~~for one additional year.~~

8 (2) A person whose driving privilege is suspended or delayed
9 for an act involving vandalism in violation of Section 594, 594.3,
10 or 594.4 of the Penal Code, may elect to reduce the period of
11 suspension or delay imposed by the court by performing
12 community service under the supervision of the probation
13 department. The period of suspension or delay ordered under
14 paragraph (1) shall be reduced at the rate of one day for each hour
15 of community service performed. If the jurisdiction has adopted
16 a graffiti abatement program as defined in subdivision (f) of Section
17 594 of the Penal Code, the period of suspension or delay ordered
18 under paragraph (1) shall be reduced at the rate of one day for each
19 day of community service performed in the graffiti abatement
20 program when the defendant and his or her parents or legal
21 guardians are responsible for keeping a specified property in the
22 community free of graffiti for a specified period of time. The
23 suspension shall be reduced only when the specified period of
24 participation has been completed. Participation of a parent or legal
25 guardian is not required under this paragraph if the court deems
26 this participation to be detrimental to the defendant, or if the parent
27 or legal guardian is a single parent who must care for young
28 children. For purposes of this paragraph, "community service"
29 means cleaning up graffiti from any public property, including
30 public transit vehicles.

31 (3) As used in this section, the term "conviction" includes the
32 findings in juvenile proceedings specified in Section 13105.

33 (b) (1) ~~Whenever~~ *When* the court suspends driving privileges
34 pursuant to subdivision (a), the court in which the conviction is
35 ~~had imposed~~ shall require all drivers' licenses held by the person
36 to be surrendered to the court. The court shall, within 10 days
37 following the conviction, transmit a certified abstract of the
38 conviction, together with any drivers' licenses surrendered, to the
39 department. *In addition to proof of financial responsibility and*
40 *any other requirements of this code, the department shall not*

1 *reissue a driver's license or remove a restriction to or the delay*
2 *of a person's driving privilege, until it has received proof that the*
3 *person has paid the graffiti abatement program fine imposed*
4 *pursuant to Section 594.4 of the Penal Code.*

5 (2) Violations of restrictions imposed pursuant to this section
6 are subject to Section 14603.

7 (c) The suspension, restriction, or delay of driving privileges
8 pursuant to this section shall be in addition to any *other* penalty
9 imposed upon conviction of a violation of Section 594, 594.3, or
10 594.4 of the Penal Code.

11 ~~SECTION 1. It is the intent of the Legislature to enact~~
12 ~~legislation that would address the abatement of graffiti.~~