

AMENDED IN SENATE MAY 9, 2000  
AMENDED IN SENATE MARCH 29, 2000

**SENATE BILL**

**No. 1616**

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**Introduced by Senator Monteith**

February 22, 2000

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An act to ~~add Section 846.3 to the Civil Code, and to~~ amend Section 594 of the Penal Code, relating to vandalism.

LEGISLATIVE COUNSEL'S DIGEST

SB 1616, as amended, Monteith. Vandalism: graffiti abatement.

Existing law provides that every person who maliciously defaces with graffiti or other inscribed material, damages, or destroys any real or personal property not his or her own is guilty of vandalism. Existing law prohibits additional specified acts of vandalism involving graffiti. Existing law also authorizes the court to order a defendant to perform community service upon conviction of certain of these offenses, or as a condition of probation, as specified, or in a jurisdiction that has adopted a graffiti abatement program, authorize the court to order, upon the conviction of a person for any of these offenses, or as a condition of probation, the person, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another property free of graffiti for a specified period of time.

This bill would delete the adoption of a graffiti abatement program as a condition for the court to order a person, convicted pursuant to these provisions, to keep the damaged

property or another property free of graffiti. Since these provisions are contained in a statute affected by Proposition 21, an initiative act, the amendment of these provisions by the Legislature would require a  $\frac{2}{3}$  vote of the Legislature as provided by the initiative act.

~~The bill additionally would provide that no cause of action shall arise against the owner, tenant, or lessee of land or premises for injuries to any person who has been permitted onto the property for purposes of abating graffiti pursuant to these provisions unless the person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.~~

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 ~~SECTION 1. Section 846.3 is added to the Civil Code,~~  
 2 ~~to read:~~

3 ~~846.3. No cause of action shall arise against the owner,~~  
 4 ~~tenant, or lessee of land or premises for injuries to any~~  
 5 ~~person who has been permitted onto the property for~~  
 6 ~~purposes of abating graffiti pursuant to Section 594 of the~~  
 7 ~~Penal Code unless the person's injuries were caused by~~  
 8 ~~the gross negligence or willful and wanton misconduct of~~  
 9 ~~the owner, tenant, or lessee.~~

10 ~~SEC. 2.~~

11 *SECTION 1.* Section 594 of the Penal Code, as  
 12 amended by Section 12 of Proposition 21, March 7, 2000,  
 13 is amended to read:

14 594. (a) Every person who maliciously commits any  
 15 of the following acts with respect to any real or personal  
 16 property not his or her own, in cases other than those  
 17 specified by state law, is guilty of vandalism:

- 18 (1) Defaces with graffiti or other inscribed material.
- 19 (2) Damages.
- 20 (3) Destroys.

21 Whenever a person violates this subdivision with  
 22 respect to real property, vehicles, signs, fixtures,  
 23 furnishings, or property belonging to any public entity, as



1 defined by Section 811.2 of the Government Code, or the  
2 federal government, it shall be a permissive inference  
3 that the person neither owned the property nor had the  
4 permission of the owner to deface, damage, or destroy the  
5 property.

6 (b) (1) If the amount of defacement, damage, or  
7 destruction is four hundred dollars (\$400) or more,  
8 vandalism is punishable by imprisonment in the state  
9 prison or in a county jail not exceeding one year, or by a  
10 fine of not more than ten thousand dollars (\$10,000), or  
11 if the amount of defacement, damage, or destruction is  
12 ten thousand dollars (\$10,000) or more, by a fine of not  
13 more than fifty thousand dollars (\$50,000), or by both that  
14 fine and imprisonment.

15 (2) (A) If the amount of defacement, damage, or  
16 destruction is less than four hundred dollars (\$400),  
17 vandalism is punishable by imprisonment in a county jail  
18 not exceeding one year, or by a fine of not more than one  
19 thousand dollars (\$1,000), or by both that fine and  
20 imprisonment.

21 (B) If the amount of defacement, damage, or  
22 destruction is less than four hundred dollars (\$400), and  
23 the defendant has been previously convicted of  
24 vandalism or affixing graffiti or other inscribed material  
25 under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,  
26 vandalism is punishable by imprisonment in a county jail  
27 for not more than one year, or by a fine of not more than  
28 five thousand dollars (\$5,000), or by both that fine and  
29 imprisonment.

30 (c) (1) Upon conviction of any person under this  
31 section for acts of vandalism consisting of defacing  
32 property with graffiti or other inscribed materials, the  
33 court may, in addition to any punishment imposed under  
34 subdivision (b), order the defendant to clean up, repair,  
35 or replace the damaged property himself or herself, or  
36 order the defendant, and his or her parents or guardians  
37 if the defendant is a minor, to keep the damaged property  
38 or another specified property in the community free of  
39 graffiti for up to one year. Participation of a parent or  
40 guardian is not required under this subdivision if the



1 court deems this participation to be detrimental to the  
2 defendant, or if the parent or guardian is a single parent  
3 who must care for young children.

4 (2) Any city, county, or city and county may enact an  
5 ordinance that provides for all of the following:

6 (A) That upon conviction of any person pursuant to  
7 this section for acts of vandalism, the court may, in  
8 addition to any punishment imposed under subdivision  
9 (b), provided that the court determines that the  
10 defendant has the ability to pay any law enforcement  
11 costs not exceeding two hundred fifty dollars (\$250),  
12 order the defendant to pay all or part of the costs not to  
13 exceed two hundred fifty dollars (\$250) incurred by a law  
14 enforcement agency in identifying and apprehending  
15 the defendant. The law enforcement agency shall  
16 provide evidence of, and bear the burden of establishing,  
17 the reasonable costs that it incurred in identifying and  
18 apprehending the defendant.

19 (B) The law enforcement costs authorized to be paid  
20 pursuant to this subdivision are in addition to any other  
21 costs incurred or recovered by the law enforcement  
22 agency, and payment of these costs does not in any way  
23 limit, preclude, or restrict any other right, remedy, or  
24 action otherwise available to the law enforcement  
25 agency.

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

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

36 (f) The court may order any person ordered to  
37 perform community service or graffiti removal pursuant  
38 to paragraph (1) of subdivision (c) to undergo  
39 counseling.



1 (g) No amount paid by a defendant in satisfaction of a  
2 criminal matter shall be applied in satisfaction of the law  
3 enforcement costs that may be imposed pursuant to this  
4 section until all outstanding base fines, state and local  
5 penalty assessments, restitution orders, and restitution  
6 fines have been paid.

7 (h) This section shall remain in effect until January 1,  
8 2002, and as of that date is repealed, unless a later enacted  
9 statute that is enacted before January 1, 2002, deletes or  
10 extends that date.

11 ~~SEC. 3.~~

12 *SEC. 2.* Section 594 of the Penal Code, as amended by  
13 Section 12.5 of Proposition 21, March 7, 2000, is amended  
14 to read:

15 594. (a) Every person who maliciously commits any  
16 of the following acts with respect to any real or personal  
17 property not his or her own, in cases other than those  
18 specified by state law, is guilty of vandalism:

- 19 (1) Defaces with graffiti or other inscribed material.
- 20 (2) Damages.
- 21 (3) Destroys.

22 Whenever a person violates this subdivision with  
23 respect to real property, vehicles, signs, fixtures,  
24 furnishings, or property belonging to any public entity, as  
25 defined by Section 811.2 of the Government Code, or the  
26 federal government, it shall be a permissive inference  
27 that the person neither owned the property nor had the  
28 permission of the owner to deface, damage, or destroy the  
29 property.

30 (b) (1) If the amount of defacement, damage, or  
31 destruction is four hundred dollars (\$400) or more,  
32 vandalism is punishable by imprisonment in the state  
33 prison or in a county jail not exceeding one year, or by a  
34 fine of not more than ten thousand dollars (\$10,000), or  
35 if the amount of defacement, damage, or destruction is  
36 ten thousand dollars (\$10,000) or more, by a fine of not  
37 more than fifty thousand dollars (\$50,000), or by both that  
38 fine and imprisonment.

39 (2) (A) If the amount of defacement, damage, or  
40 destruction is less than four hundred dollars (\$400),



1 vandalism is punishable by imprisonment in a county jail  
2 not exceeding one year, or by a fine of not more than one  
3 thousand dollars (\$1,000), or by both that fine and  
4 imprisonment.

5 (B) If the amount of defacement, damage, or  
6 destruction is less than four hundred dollars (\$400), and  
7 the defendant has been previously convicted of  
8 vandalism or affixing graffiti or other inscribed material  
9 under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,  
10 vandalism is punishable by imprisonment in a county jail  
11 for not more than one year, or by a fine of not more than  
12 five thousand dollars (\$5,000), or by both that fine and  
13 imprisonment.

14 (c) Upon conviction of any person under this section  
15 for acts of vandalism consisting of defacing property with  
16 graffiti or other inscribed materials, the court may, in  
17 addition to any punishment imposed under subdivision  
18 (b), order the defendant to clean up, repair, or replace  
19 the damaged property himself or herself, or order the  
20 defendant, and his or her parents or guardians if the  
21 defendant is a minor, to keep the damaged property or  
22 another specified property in the community free of  
23 graffiti for up to one year. Participation of a parent or  
24 guardian is not required under this subdivision if the  
25 court deems this participation to be detrimental to the  
26 defendant, or if the parent or guardian is a single parent  
27 who must care for young children.

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

33 (e) As used in this section, the term “graffiti or other  
34 inscribed material” includes any unauthorized  
35 inscription, word, figure, mark, or design, that is written,  
36 marked, etched, scratched, drawn, or painted on real or  
37 personal property.

38 (f) The court may order any person ordered to  
39 perform community service or graffiti removal pursuant



1 to paragraph (1) of subdivision (c) to undergo  
2 counseling.  
3 (g) This section shall become operative on January 1,  
4 2002.

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