

**Assembly Bill No. 1386**

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Passed the Assembly August 27, 1998

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*Chief Clerk of the Assembly*

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Passed the Senate August 26, 1998

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_ day  
of \_\_\_\_\_, 1998, at \_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_

An act to amend Sections 594.6 and 640.7 of, and to amend, repeal, and add Section 594 of, the Penal Code, relating to vandalism.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1386, Goldsmith. Punishment: vandalism.

(1) Under existing law, vandalism is defined to include any act that defaces personal or real property with graffiti or other inscribed material. Whether the act is punishable as a felony or a misdemeanor depends upon the monetary amount of the defacement. If the amount of defacement, damage, or destruction is less than \$400, vandalism is punishable by imprisonment in a county jail for not more than 6 months, or by a fine of not more than \$1,000 or by both.

This bill would increase the penalty if the amount of defacement, damage, or destruction is less than \$400 and the defendant has been previously convicted of vandalism or affixing inscribed material, as specified. In that case the crime of vandalism would be punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$5,000, or by both. By increasing the penalty for an existing crime, this bill would impose a state-mandated local program.

(2) Existing law authorizes the court to impose community service, as specified, as a condition of probation, upon a person who has been previously convicted of vandalism or other similar specified offense or offenses on 2 separate occasions, having been incarcerated for at least one of those convictions, who is subsequently convicted of vandalism. The order to perform community service may not exceed 300 hours over a specified period of time.

This bill would delete the above requirement of a prior conviction and incarceration, and authorize the court to impose community service under the above provision as a condition of probation, upon a person who has been



convicted of vandalism or other specified offense. This bill would also make conforming changes.

(3) This bill would incorporate additional changes in Section 594 of the Penal Code proposed by AB 1897, to become operative if AB 1897 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

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

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

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

(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars (\$50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.



(2) If the amount of defacement, damage, or destruction is five thousand dollars (\$5,000) or more but less than fifty thousand dollars (\$50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more but less than five thousand dollars (\$5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars (\$5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

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

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the jurisdiction has adopted a graffiti abatement program, 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. Participation of a parent or guardian is not required under this subdivision if the



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

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

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

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

(g) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (c) to undergo counseling.

SEC. 1.5. Section 594 of the Penal Code is amended to read:

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

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

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



(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars (\$50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars (\$5,000) or more but less than fifty thousand dollars (\$50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more but less than five thousand dollars (\$5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars (\$5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

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

(c) (1) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if



the jurisdiction has adopted a graffiti abatement program, 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. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

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

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

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

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

(e) As used in this section, the term “graffiti or other inscribed material” includes any unauthorized inscription, word, figure, mark, or design that is written,



marked, etched, scratched, drawn, or painted on real or personal property.

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

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

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

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

SEC. 1.6. Section 594 is added to the Penal Code, to read:

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

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

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



(b) (1) If the amount of defacement, damage, or destruction is fifty thousand dollars (\$50,000) or more, vandalism is punishable by imprisonment in the state prison or in a county jail not exceeding one year, or by a fine of not more than fifty thousand dollars (\$50,000), or by both that fine and imprisonment.

(2) If the amount of defacement, damage, or destruction is five thousand dollars (\$5,000) or more but less than fifty thousand dollars (\$50,000), vandalism is punishable by imprisonment in the state prison, or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(3) If the amount of defacement, damage, or destruction is four hundred dollars (\$400) or more but less than five thousand dollars (\$5,000), vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of five thousand dollars (\$5,000), or by both that fine and imprisonment.

(4) (A) If the amount of defacement, damage, or destruction is less than four hundred dollars (\$400), vandalism is punishable by imprisonment in a county jail for not more than six months, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

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

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court may, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or, if the



jurisdiction has adopted a graffiti abatement program, 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. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

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

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

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

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

(h) This section shall become operative on January 1, 2002.

SEC. 2. Section 594.6 of the Penal Code is amended to read:

594.6. (a) Every person who, having been convicted of vandalism or affixing graffiti or other inscribed material under Section 594, 594.3, 594.4, or 640.7, or any combination of these offenses, may be ordered by the court as a condition of probation to perform community service not to exceed 300 hours over a period not to exceed 240 days during a time other than his or her hours



of school attendance or employment. Nothing in this subdivision shall limit the court from ordering the defendant to perform a longer period of community service if a longer period of community service is authorized under other provisions of law.

(b) In lieu of the community service that may be ordered pursuant to subdivision (a), the court may, if a jurisdiction has adopted a graffiti abatement program as defined in subdivision (f) of Section 594, order the defendant, and his or her parents or guardians if the defendant is a minor, as a condition of probation, to keep a specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children.

(c) The court may order any person ordered to perform community service or graffiti removal pursuant to subdivision (a) or (b) to undergo counseling.

SEC. 3. Section 640.7 of the Penal Code is amended to read:

640.7. Any person who violates Section 594, 640.5, or 640.6 on or within 100 feet of a highway, or its appurtenances, including, but not limited to, guardrails, signs, traffic signals, snow poles, and similar facilities, excluding signs naming streets, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. A second conviction is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

SEC. 4. Sections 1.5 and 1.6 of this bill incorporate amendments to Section 594 of the Penal Code proposed by both this bill and AB 1897. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 594 of the Penal Code, and (3) this bill is



enacted after AB 1897, in which case Section 1 of this bill shall not become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved \_\_\_\_\_, 1998

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*Governor*

