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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3492

February 28, 2008

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to crimes; prohibiting graffiti; providing incarcerative and intermediate
1.3 sanctions; proposing coding for new law in Minnesota Statutes, chapter 609.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. **[609.5951] GRAFFITI; DEFINITION.**

1.6 Subdivision 1. **Applicability.** For purposes of sections 609.5951 to 609.5957, the
1.7 terms defined in this section have the meanings given them.

1.8 Subd. 2. **Bona fide evidence of majority and identity.** "Bona fide evidence of
1.9 majority and identity" is any document evidencing the age and identity of an individual
1.10 which has been issued by a federal, state, or local governmental entity, and includes, but is
1.11 not limited to, a driver's license, a Minnesota identification card, or an identification card
1.12 issued to a member of the armed forces.

1.13 Subd. 3. **Graffiti.** "Graffiti" means any form of unauthorized painting, writing, or
1.14 inscription, regardless of the content or nature of the material used in the commission
1.15 of the act.

1.16 Subd. 4. **Posted.** "Posted" means a sign placed in a reasonable location or locations
1.17 stating it is a misdemeanor to possess a spray can of paint in that public facility, park,
1.18 playground, swimming pool, beach, or recreational area without valid authorization.

1.19 Sec. 2. **[609.5952] AEROSOL PAINT; SALE; DEFACING PROPERTY;**
1.20 **PENALTY.**

1.21 Subdivision 1. **Act.** (a) It is unlawful for any person, firm, or corporation, except
1.22 a parent or legal guardian, to sell, give, or in any way furnish to another person, who

2.1 is under the age of 18 years, any aerosol container of paint that is capable of defacing
2.2 property without first obtaining bona fide evidence of majority and identity.

2.3 (b) A violation of paragraph (a) is a misdemeanor.

2.4 Subd. 2. **Application.** This section does not apply to the furnishing of six ounces or
2.5 less of an aerosol container of paint to a minor for the minor's use or possession under the
2.6 supervision of the minor's parent, guardian, instructor, or employer.

2.7 Subd. 3. **Exception; school-related activities.** Aerosol containers of paint or
2.8 related substances may be furnished for use in school-related activities that are part of the
2.9 instructional program when used under controlled and supervised situations within the
2.10 classroom or on the site of a supervised project.

2.11 **Sec. 3. [609.5953] MINOR PURCHASE OF AEROSOL PAINT; POSSESSION;**
2.12 **DEFACING PROPERTY; PENALTY.**

2.13 Subdivision 1. **Minor purchases.** It is unlawful for any person under the age of 18
2.14 years to purchase an aerosol container of paint that is capable of defacing property.

2.15 Subd. 2. **Notice.** Every retailer selling or offering for sale in this state aerosol
2.16 containers of paint capable of defacing property shall post in a conspicuous place a sign
2.17 in letters at least three-eighths of an inch high stating: "Any person who maliciously
2.18 defaces real or personal property with paint is guilty of a crime which is punishable by
2.19 a fine, imprisonment, or both."

2.20 Subd. 3. **Plain view.** It is unlawful for any person to carry on his or her person and
2.21 in plain view to the public an aerosol container of paint while in any posted public facility,
2.22 park, playground, swimming pool, beach, or recreational area, other than a highway,
2.23 street, alley, or way, unless the person has first received valid authorization from the
2.24 governmental entity which has jurisdiction over the public area.

2.25 Subd. 4. **Penalty.** A violation of subdivision 1 is a misdemeanor.

2.26 Subd. 5. **Minor possession.** (a) It is unlawful for any person under the age of 18
2.27 years to possess an aerosol container of paint for the purpose of defacing property while
2.28 on any public highway, street, alley, or way, or other public place, regardless of whether
2.29 that person is or is not in any automobile, vehicle, or other conveyance.

2.30 (b) As a condition of probation for any violation of this subdivision, the court may
2.31 order a defendant convicted of a violation of this subdivision to perform community
2.32 service as follows:

2.33 (1) for a first conviction under this subdivision, community service not to exceed
2.34 100 hours over a period not to exceed 90 days during a time other than during hours of
2.35 school attendance or employment;

3.1 (2) if the person has a prior conviction under this subdivision, community service
3.2 not to exceed 200 hours over a period of 180 days during a time other than during hours
3.3 of school attendance or employment; or

3.4 (3) if the person has two prior convictions under this subdivision, community service
3.5 not to exceed 300 hours over a period not to exceed 240 days during a time other than
3.6 during hours of school attendance or employment.

3.7 (c) A violation of this subdivision is a misdemeanor.

3.8 **Sec. 4. [609.5954] POSSESSION OF DRILL BITS; PENALTY.**

3.9 Subdivision 1. **Act.** A person who possesses a masonry or glass drill bit, a carbide
3.10 drill bit, a glass cutter, a grinding stone, an awl, a chisel, or a carbide scribe with the intent
3.11 to commit graffiti, is guilty of a misdemeanor.

3.12 Subd. 2. **Condition of probation.** As a condition of probation for any violation
3.13 of this section, the court may order the defendant to perform community service not to
3.14 exceed 90 hours during a time other than hours of school attendance or employment.

3.15 **Sec. 5. [609.5955] GOVERNMENTAL PROPERTY; GRAFFITI; PENALTIES.**

3.16 Subdivision 1. **Acts.** Any person who writes, sprays, scratches, or otherwise affixes
3.17 graffiti on or in the facilities or vehicles of a governmental entity, or on or in the facilities
3.18 or vehicles of a public transportation system, or on or in the facilities of or vehicles
3.19 operated by entities subsidized by, the Department of Transportation, or on or in any
3.20 leased or rented facilities or vehicles for which any of the above entities incur costs of
3.21 less than \$250 for cleanup, repair, or replacement is guilty of an infraction, punishable
3.22 by a fine not to exceed \$500 and by a minimum of 24 hours of community service for a
3.23 total time not to exceed 100 hours over a period not to exceed 90 days, during a time other
3.24 than during hours of school attendance or employment.

3.25 Subd. 2. **Cleanup.** (a) Upon conviction of any person under subdivision 1, the court
3.26 may also, at the victim's option, order the defendant to perform the necessary labor to
3.27 cleanup, repair, or replace the property damaged by that person, but shall not order the
3.28 person to pay for any related costs incurred by the cleanup, repair, or replacement of the
3.29 property.

3.30 (b) If a minor is personally unable to pay any fine levied for violating subdivision
3.31 1, the parent or legal guardian of the minor shall be liable for payment of the fine. A
3.32 court may waive payment of the fine by the parent or legal guardian upon a finding of
3.33 good cause.

4.1 (c) Any fine levied for a violation of subdivision 1 shall be credited by the county
4.2 treasurer to the governmental entity having jurisdiction over, or responsibility for, the
4.3 facility or vehicle involved, to be used for removal of the graffiti. Before crediting these
4.4 finances to the appropriate governmental entity, the county may determine the administrative
4.5 costs it has incurred pursuant to this section, and retain an amount equal to those costs.

4.6 (d) Any community service which is required pursuant to subdivision 1 of a person
4.7 under the age of 18 years may be performed in the presence, and under the direct
4.8 supervision, of the person's parent or legal guardian.

4.9 (e) As used in this section, graffiti means any form of unauthorized painting, writing,
4.10 or inscription regardless of the content or nature of the material used in the commission
4.11 of the act.

4.12 **Sec. 6. [609.5956] GRAFFITI; HIGHWAYS OR APPURTENANCES;**
4.13 **PENALTIES.**

4.14 Subdivision 1. **Acts.** Any person who violates sections 609.5952 to 609.5954 on or
4.15 within 100 feet of a highway, or its appurtenances, including, but not limited to, guardrails,
4.16 signs, traffic signals, snow poles, and similar facilities, excluding signs naming streets, is
4.17 guilty of a misdemeanor. A person convicted a second or subsequent time of a violation of
4.18 section 609.5952, 609.5953, or 609.5954 is guilty of a gross misdemeanor.

4.19 Subd. 2. **Condition of probation.** (a) As a condition of probation, the court may
4.20 order the defendant to perform community service not to exceed 100 hours over a period
4.21 not to exceed 90 days during a time other than during hours of school attendance or
4.22 employment.

4.23 (b) If the person has been convicted previously of this offense, the court may, in
4.24 addition, order the defendant to perform community service not to exceed 200 hours
4.25 over a period not to exceed 180 days during a period other than during hours of school
4.26 attendance or employment.

4.27 (c) If the person has been convicted twice previously of this offense, the court, in
4.28 addition, may order the defendant to perform community service not to exceed 300 hours
4.29 over a period not to exceed 240 days.

4.30 **Sec. 7. [609.5957] PENALTY ENHANCEMENT.**

4.31 Any person convicted previously of a violation of section 609.5952, 609.5953,
4.32 609.5954, or 609.5955, or any combination of those offenses, on two occasions, and
4.33 having been incarcerated under a sentence, a conditional sentence, or a grant of probation
4.34 for at least one of the convictions, is subsequently convicted under one of those sections,

5.1 may be ordered by the court as a condition of probation to perform community service not
5.2 to exceed 300 hours over a period not to exceed 240 days during a time other than during
5.3 hours of school attendance or employment.

5.4 Sec. 8. **EFFECTIVE DATE.**

5.5 Sections 1 to 7 are effective August 1, 2007, and apply to crimes committed on or
5.6 after that date.