

Making Graffiti an Expensive Habit

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Minnesota Senate File 0587 (session 2008)

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Senator – District 61

Crafted by: The Graffiti Task Force (GTF),
of the Lyndale neighborhood,
Minneapolis, Minnesota

Approved by: U.S. Supreme Court (1970)
Minnesota Supreme Court (1993)
General Membership of the
Lyndale Neighborhood Association (04/23/2007)

Supported by: Ralph Remington (09/19/2007),
Council Member – Ward 10

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Sent: Friday, September 14, 2007 11:24 AM
Subject: RE:

Hi Ray,

Thanks for sending this on. **Council Member Remington** and I reviewed the **proposed statute** and he sees real value in certifying police officers as expert witnesses.

Please let our office know if there are ways we can help.

Have a great weekend,

Kim

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Our goal – The GTF seeks to eradicate graffiti by making it an expensive habit. The first step is to identify and sentence the vandal in a court. Once guilt is established, the vandal's name and address become public information. A lawsuit in a civil court can follow if the landowner chooses.

Minnesota's graffiti statute (Minn.Stat. §617.90) allows the civil courts to triple the cost of repairs and include attorney fees in a judgment to be paid by the vandal (\$1,000 to be paid by parents of a minor).

Here's the problem: unless a police officer is an eye witness, judges in criminal courts will not certify the officer as an expert who can identify the signature of a graffiti vandal. Police know who is destroying our neighborhoods, and there is no valid reason why they cannot testify as experts. The GTF aims to change the law in a way that strikes the "fair balance" required by the U.S. Supreme Court.^[1]

Revised 02/05/08

What follows is the full text of **Senate File 0587**, as redrafted by Senate Counsel. It amends Minnesota's graffiti statute to allow a police officer who is not an eye witness to identify in an informal hearing the individual responsible for graffiti.

("Petty misdemeanor" means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.)

Minn.Stat. 609.02, Subd. 4a

A bill for an act
relating to public safety; decreasing the criminal penalty for damaging property
via graffiti and providing for a new standard of proof for the offense; amending
Minnesota Statutes 2006, section 617.90.

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

Section 1. Minnesota Statutes 2006, section 617.90, is amended to read:

617.90 GRAFFITI ~~DAMAGE ACTION.~~

Subdivision 1. Definition. For purposes of this section, "graffiti" means unauthorized markings of paint, dye, or other similar substance that have been placed on real or personal property such as buildings, fences, transportation equipment, or other structures, or the unauthorized etching or scratching of the surfaces of such real or personal property, any of which markings, scratchings, or etchings are visible from premises open to the public.

Subd. 2. Cause of action. An action for damage to property caused by graffiti may be brought by the owner of public or private property on which graffiti has been placed. Damages may be recovered for three times the cost of restoring the property, or the court may order a defendant to perform the work of restoring the property. Damages may be recovered from an individual who placed graffiti on public or private real or personal property or from the parent of a minor individual. The liability of the parent is limited to the amount specified in section 540.18. The court may award attorney fees and costs to a prevailing plaintiff.

Subd. 3. Petty misdemeanor; local approval required. (a) Notwithstanding section 609.595, a person who damages property through the addition of graffiti is guilty of a petty misdemeanor.

(b) Notwithstanding any other law or rule of criminal procedure to the contrary, a person may be held liable under this subdivision based on credible testimony of a peace officer that identifies who is responsible for the graffiti.

(c) This subdivision is effective in a statutory or home rule charter city when the city council, or in the area outside the corporate limits of a city, the county board, adopts an ordinance providing that it is effective within the city or county.

EFFECTIVE DATE. This section is effective August 1, 2008.

Standard of proof – The U.S. Supreme Court addressed the question of “what standard of proof is required by the Fourteenth Amendment to the Constitution in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite period to a state mental hospital.”^[1] 441 U.S. 419-420. It concluded that “the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence.” 441 U.S. 427.

The key word is “confinement” – state activity that interferes with liberty. “In cases involving individual rights, whether criminal or civil, the standard of proof at a minimum reflects the value society places on individual liberty (punctuation omitted).” 441 U.S. 425. When liberty is not threatened, the burden of proof must strike “a fair balance between the rights of the individual and the legitimate concerns of the state.” 441 U.S. 431.

Likewise, the Minnesota Supreme Court concurred: “the legislature has the power to determine the standard of proof in a statutorily created cause of action.”^[2] While State entities do not need prior legislative approval, there is a limit to how low the standard may drop. Primarily because liberty was threatened, an attempt by the Department of Corrections to apply a standard that required only “some evidence” was rejected.^[3]

Conclusion – Graffiti cases involving an eye witness would continue to be prosecuted in a criminal court by the City/County Attorney. All rules of evidence would apply. If convicted, the sentence could include incarceration.

In graffiti cases where there is no eye witness, a police officer would use traditional investigative techniques – search warrant, snitch money, etc. – to derive “credible testimony” that is sufficient to persuade a judge in an informal hearing. A lowered standard of proof is allowed for petty misdemeanors because the sentence may only be a fine, with no threat of incarceration.

1. Addington v. Texas, 441 U.S. 418, 60 L.Ed.2d 323, 995 S.Ct. 1804 (1970)

2. State v. Alpine Air Products, 500 N.W.2d 788, 790 (Minn. 1993)

3. Carrilo v. Fabian, 701 N.W.2d 763, 777 (Minn. 2005)