

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 408**

5 (SENATORS JENKINS, PLYMALE AND BEACH, *original sponsors*)

6 \_\_\_\_\_  
7 [Passed March 10, 2012; in effect ninety days from passage.]  
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11 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
12 adding thereto a new section, designated §61-3-59, relating to  
13 crimes against property involving graffiti; defining offenses  
14 and terms; providing for suspension of driver's license in  
15 certain circumstances; providing for sentencing of community  
16 service; providing that civil liability is not precluded by  
17 criminal provisions; and establishing criminal penalties.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended  
20 by adding thereto a new section, designated §61-3-59, to read as  
21 follows:

22 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

23 **§61-3-59. Graffiti; penalties; and damages recoverable in a civil**  
24 **action.**

25 (a) As used in this section, "graffiti" means any unauthorized

1 inscription, word, figure or design that is marked, etched,  
2 scratched, drawn or painted on any real or personal property.

3 (b) A person who places graffiti on public or private  
4 property, real or personal, of another, without the permission of  
5 the owner is guilty of a misdemeanor and, upon conviction thereof,  
6 for a first offense, may be confined in jail not less than twenty-  
7 four hours nor more than six months or fined not more than \$1,000,  
8 or both. For a second offense, the person is guilty of a  
9 misdemeanor and, upon conviction thereof, may be confined in jail  
10 not less than forty-eight hours nor more than six months or fined  
11 not more than \$2,000, or both. For third and subsequent offenses,  
12 the person is guilty of a felony and, upon conviction thereof, may  
13 be imprisoned in a correctional facility for not less than one nor  
14 more than three years or fined not more than \$10,000, or both.

15 (c) Any conviction for a violation of subsection (b) for an  
16 offense which occurred more than ten years prior to the date of  
17 arrest in the current proceeding, may not be considered for the  
18 purposes of imposing a sentence under subsection (b) relating to a  
19 second, third and subsequent offense.

20 (d) The court may, in addition to any other fine or penalty  
21 imposed, order a person who violates this section to pay  
22 restitution.

23 (e) A person convicted under any provision in this section  
24 shall be sentenced to not less than one hundred twenty hours of  
25 court-approved community service. The court may order the person to  
26 repair, replace, or clean up the property damaged or destroyed by

1 the person or any other public or private property, with approval  
2 of the owner, that is located in the county where the offense  
3 occurred.

4 (f) If a person who is less than eighteen years of age is  
5 found guilty of violating this section, the court may, in addition  
6 to any other penalty imposed, issue an order suspending the  
7 driver's license of the person for not more than two years. If the  
8 person does not possess a driver's license, the court may issue an  
9 order prohibiting the person from applying for a driver's license  
10 for not less than six months and not more than two years. The court  
11 shall, within five days after issuing the order, forward to the  
12 Division of Motor Vehicles any licenses together with a copy of the  
13 order.

14 (g) A criminal penalty imposed pursuant to this section is in  
15 addition to any civil penalty or other remedy available pursuant to  
16 this section or another statute for the same conduct.

17 (h) The owner of public or private property that has been  
18 damaged by graffiti may bring a civil action against the person who  
19 placed the graffiti on the property. The court may award to the  
20 property owner damages in an amount up to three times the amount of  
21 any loss in value to the property or up to three times the cost of  
22 restoring the property plus attorney's fees and costs, or both.