

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1323

H.P. 922

House of Representatives, March 15, 2005

### An Act To Create the Crime of Producing Graffiti

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BOWLES of Sanford.  
Cosponsored by Senator COURTNEY of York and  
Representatives: CLOUGH of Scarborough, NASS of Acton, NUTTING of Oakland, Senator:  
NASS of York.

Be it enacted by the People of the State of Maine as follows:

2           **Sec. 1. 15 MRSA §3314, sub-§1, ¶E-1** is enacted to read:

4           E-1. For an adjudication under Title 17-A, section 808,  
6           subsection 1, the court shall require the juvenile to make  
8           restitution to the property owner in the amount of the cost  
10           of removal of the graffiti or repair or replacement costs or  
12           require the juvenile to clean up the graffiti. The court  
14           also shall suspend the juvenile's driver's license for a  
16           period of 6 months. The court shall order a parent,  
18           guardian or legal custodian to pay or cause to be paid all  
20           restitution ordered pursuant to this paragraph if the  
22           juvenile fails to comply with a restitution order. After  
24           notice and hearing and in accordance with the Maine Rules of  
26           Criminal Procedure, Rule 42(d), the court may invoke its  
28           contempt powers to enforce the restitution order that  
30           applies to the juvenile or the juvenile's parent, guardian  
32           or legal custodian.

34           **Sec. 2. 17-A MRSA §§808 to 810** are enacted to read:

36           **§808. Graffiti**

38           1. A person is guilty of the crime of producing graffiti if  
40           that person intentionally, knowingly or recklessly causes an  
42           inscription, word, figure or design to be marked, etched,  
44           scratched, drawn, painted or affixed in any way to property of  
46           another knowing that the actor is not authorized to do so. As  
48           used in this section, "property of another" means property in  
              which any person or government other than the actor has an  
              interest upon which the actor is not privileged to infringe.

2. Producing graffiti is a Class D crime.

3. In addition to any other penalty imposed pursuant to  
              this section, the court shall order a person convicted of  
              producing graffiti to pay restitution pursuant to chapter 54 to  
              the property owner in the amount of the cost of removal of the  
              graffiti or repair or replacement costs or order the actor to  
              clean up the graffiti.

**§809. Possession of aerosol paint can with intent to produce**  
              **graffiti**

1. A person is guilty of possession of an aerosol paint can  
              with intent to produce graffiti if that person:

2 A. Is in a public place or on private property without the  
consent of the owner, lessee or other person entitled to the  
4 legal possession of the private property; and

6 B. Possesses 3 or more aerosol or pressurized containers of  
paint, dye, ink or similar substance.

8 2. Possession of an aerosol paint can with intent to  
produce graffiti is a Class E crime.

10  
12 3. As used in this section, "aerosol paint can" means an  
aerosol container that is made or adapted for the purpose of  
14 applying paint or another substance capable of defacing property.

**§810. Illegal sale of aerosol paint can to minor**

16  
18 1. As used in this section, unless the context otherwise  
indicates, the following terms have the following meanings.

20 A. "Aerosol paint can" means an aerosol container that is  
made or adapted for the purpose of applying paint or another  
22 substance capable of defacing property.

24 B. "Minor" means a person who has not attained 18 years of  
age.

26  
28 C. "Sale" means to sell, exchange, give, deliver, loan or  
otherwise provide or cause or permit to be sold, exchanged,  
30 given, delivered, loaned or otherwise provided.

32 2. A person is guilty of illegal sale of an aerosol paint  
can to a minor if that person sells an aerosol paint can to a  
34 minor and the minor is not accompanied by the minor's parent or  
guardian.

36 3. Illegal sale of an aerosol paint can to a minor is a  
Class E crime.

38  
40 4. This section does not apply to a parent, legal guardian,  
school teacher or law enforcement officer in the performance of  
42 duty who provides an aerosol paint can to a minor.

44 **SUMMARY**

46 This bill does the following.

48 1. It establishes the crime of producing graffiti to  
50 prohibit a person from intentionally, knowingly or recklessly  
causing an inscription, word, figure or design to be marked,

2 etched, scratched, drawn, painted or affixed in any way to the  
property of another. Producing graffiti is a Class D crime. A  
4 person convicted of producing graffiti is required to either pay  
restitution to remove the graffiti or repair or replace the  
6 property defaced by the graffiti or to clean up the graffiti.

8 If the offender is a juvenile, the court is required to  
suspend the juvenile's driver's license for 6 months and to  
10 require the parent, guardian or legal custodian of the juvenile  
to pay the restitution if the juvenile fails to do so.

12 2. It establishes the crime of possession of an aerosol  
paint can with intent to produce graffiti, which applies to  
14 persons who are in possession of 3 or more aerosol paint cans  
while on public property or the private property of another  
16 person without that person's permission. Possession of an  
aerosol paint can with intent to produce graffiti is a Class E  
18 crime.

20 3. It prohibits the sale or other furnishing of an aerosol  
paint can to a person who has not yet attained 18 years of age; a  
22 violation of this prohibition is a Class E crime.