

HOUSE BILL 739

E1

0lr2530

By: **Delegate Olszewski**

Introduced and read first time: February 5, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Malicious Destruction of Property – Affirmative Defense**

3 FOR the purpose of establishing that it is an affirmative defense to a charge of
4 malicious destruction of property that the defendant was attempting to repair,
5 clean, remove, or cover a previous act of graffiti.

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Law
8 Section 6–301
9 Annotated Code of Maryland
10 (2002 Volume and 2009 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Criminal Law**

14 6–301.

15 (a) A person may not willfully and maliciously destroy, injure, or deface the
16 real or personal property of another.

17 (b) A person who, in violation of this section, causes damage of at least \$500
18 to the property is guilty of a misdemeanor and on conviction is subject to
19 imprisonment not exceeding 3 years or a fine not exceeding \$2,500 or both.

20 (c) A person who, in violation of this section, causes damage of less than
21 \$500 to the property is guilty of a misdemeanor and on conviction is subject to
22 imprisonment not exceeding 60 days or a fine not exceeding \$500 or both.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (d) (1) For purposes of this subsection, an act of "graffiti" means a
2 permanent drawing, permanent painting, or a permanent mark or inscription on the
3 property of another without the permission of the owner of the property.

4 (2) In addition to the penalties set forth in subsections (b) and (c) of
5 this section, the court shall order a person convicted of causing malicious destruction
6 by an act of graffiti to pay restitution or perform community service or both.

7 (3) Title 11, Subtitle 6 of the Criminal Procedure Article applies to an
8 order of restitution under this subsection.

9 (4) **IT SHALL BE AN AFFIRMATIVE DEFENSE TO A CHARGE OF A**
10 **VIOLATION OF THIS SECTION THAT THE DEFENDANT WAS ATTEMPTING TO**
11 **REPAIR, CLEAN, REMOVE, OR COVER A PREVIOUS ACT OF GRAFFITI.**

12 (e) (1) Except as provided in paragraph (2) of this subsection, to
13 determine a penalty, the court may consider as one crime the aggregate value of
14 damage to each property resulting from one scheme or continuing course of conduct.

15 (2) If separate acts resulting in damage to the properties of one or
16 more owners are set forth by separate counts in one or more charging documents, the
17 separate counts may not be merged for sentencing.

18 (f) (1) The value of damage is not a substantive element of a crime under
19 this section and need not be stated in the charging document.

20 (2) The value of damage shall be based on the evidence and that value
21 shall be applied for the purpose of imposing the penalties established in this section.

22 (3) If it cannot be determined from the evidence whether the value of
23 the damage to the property is more or less than \$500, the value is deemed to be less
24 than \$500.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2010.