

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 529 Soldiers' and Heroes' Monuments and Memorials Protection Act  
**SPONSOR(S):** Criminal Justice Subcommittee; Drake and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Fields	White
2) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N	Darden	Miller
3) Judiciary Committee	18 Y, 0 N	Fields	Camechis

### SUMMARY ANALYSIS

Currently, s. 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages, by any means, real or personal property belonging to another. Punishment for a violation of s. 806.13, F.S., ranges from a second degree misdemeanor to a third degree felony depending on the value of the damage caused and location of the damage. Criminal mischief that damages a house of worship, public telephone, or sexually violent predator detention facility constitutes a third degree felony.

The bill makes it a third degree felony to willfully and maliciously injure, damage, or deface a memorial which honors or commemorates a soldier, a military organization or unit, a first responder, or an astronaut.

The Criminal Justice Impact Conference met on March 2, 2017, and determined the bill will have a positive insignificant impact, i.e., an increase of less than 10 prison beds, as it creates a new felony offense. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill provides an effective date of October 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Criminal Mischief

Section 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages real or personal property belonging to another. Such injury or damage includes, but is not limited to, the placement of graffiti thereon or other acts of vandalism.<sup>1</sup> Criminal mischief varies in severity depending on the value of the damage caused and is punishable as a:

- Second degree misdemeanor<sup>2</sup> if the damage to such property is \$200 or less.<sup>3</sup>
- First degree misdemeanor<sup>4</sup> if the damage to such property is greater than \$200 but less than \$1,000.<sup>5</sup>
- Third degree felony<sup>6</sup> if the damage to such property is \$1,000 or greater, or if there is interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore.<sup>7</sup>

If the person has one or more previous convictions for violating s. 806.13(1), F.S., then any offense under that subsection shall be reclassified as a third degree felony.<sup>8</sup> Moreover, as discussed below, s. 806.13, F.S., specifies enhanced penalties when the criminal mischief occurs in certain locations, with the use of graffiti, or is committed by minors.

##### Houses of Worship

A person who willfully and maliciously defaces, injures, or damages, by any means, any church, synagogue, mosque, or other place of worship, or any religious article contained therein, commits a third degree felony if the damage to the property is greater than \$200.<sup>9</sup>

##### Public Telephones

A person commits a third degree felony if:

- The person, without the consent of the owner, willfully destroys or substantially damages any public telephone, or telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances;

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<sup>1</sup> Section 806.13(1)(a), F.S.

<sup>2</sup> A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a fine not exceeding \$500. ss. 775.082 and 775.083, F.S.

<sup>3</sup> Section 806.13(1)(b)1., F.S.

<sup>4</sup> A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year and a fine not exceeding \$1,000. ss. 775.082 and 775.083, F.S.

<sup>5</sup> Section 806.13(1)(b)2., F.S.

<sup>6</sup> A third degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding \$5,000. ss. 775.082 and 775.083, F.S.

<sup>7</sup> Section 806.13(1)(b)3., F.S.

<sup>8</sup> Section 806.13(1)(b)4., F.S.

<sup>9</sup> Section 806.13(2), F.S.

- The destruction or damage renders a public telephone inoperative or opens the body of a public telephone; and
- A conspicuous notice of the provisions of this subsection and its penalties is posted on or near the destroyed or damaged instrument and visible to the public at the time of the commission of the offense.<sup>10</sup>

### Sexually Violent Predator Facility

A person who willfully and maliciously defaces, injures, or damages, by any means, a sexually violent predator detention or commitment facility, or any other property contained therein, commits a third degree felony if the damage to property is greater than \$200.<sup>11</sup>

### Graffiti

A person who violates s. 806.13, F.S., when the violation is related to the placement of graffiti shall, in addition to any other criminal penalty, be required to pay a fine of at least:

- \$250 for a first conviction.
- \$500 for a second conviction.
- \$1,000 for a third or subsequent conviction.<sup>12</sup>

In addition, a person convicted of an offense under 806.13, F.S., when the offense is related to the placement of graffiti, shall be required to perform at least 40 hours of community service and, if possible, perform at least 100 hours of community service that involves the removal of graffiti.<sup>13</sup>

The parent or legal guardian of a minor who has placed graffiti is liable for payment of the fine.<sup>14</sup> The court may waive this requirement if it finds the person does not have the ability to pay the fine. The court may also direct the Department of Highway Safety and Motor Vehicles to revoke the minor's driver license for up to one year.<sup>15</sup> This period may be reduced by performing community service at the rate of a one day reduction for each hour of community service performed.<sup>16</sup>

### Effect of the Bill

The bill amends s. 806.13(5), F.S., to make it a third degree felony for a person to willfully and maliciously injure, damage, or deface a soldier's or hero's memorial. The term "soldier's or hero's memorial" means real or personal property belonging to another person which honors or commemorates:

- A soldier or member of the military for the original 13 colonies, the United States, the District of Columbia, or a territory of the United States.
- A military organization or unit of the original 13 colonies, the United States, the District of Columbia, or a territory of the United States.
- A first responder<sup>17</sup> or an astronaut for the National Aeronautics and Space Administration.

<sup>10</sup> Section 806.13(3), F.S.

<sup>11</sup> Section 806.13(4), F.S.

<sup>12</sup> Section 806.13(6)(a), F.S.

<sup>13</sup> Section 806.13(6)(b), F.S.

<sup>14</sup> Section 806.13(6)(c), F.S.

<sup>15</sup> Section 806.13(7)(a), F.S. If the minor's driver license is already suspended or revoked, the court may extend the period of suspension or revocation up to one year. s. 806.13(7)(b), F.S. If the minor is below the legal age for a driver's license, the court may instruct the Department of Highway Safety and Motor Vehicles to delay issuance of a license for up to one year. s. 806.13(7)(c), F.S..

<sup>16</sup> Section 806.13(8), F.S.

<sup>17</sup> Section 112.1815, F.S.. The term "first responder" means "a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23 employed by state or local government. A

The bill also conforms a cross-reference in s. 806.13(9), F.S.

The bill takes effect October 1, 2017.

**B. SECTION DIRECTORY:**

Section 1: Establishes the “Soldiers’ and Heroes’ Memorials Protection Act.”

Section 2: Amends s. 806.13, F.S., relating to criminal mischief.

Section 3: Provides an effective date of October 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 2, 2017, and determined the bill will have a positive insignificant impact, i.e., an increase of less than 10 prison beds, as it creates a new felony offense.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may reduce the need for jail beds to the extent that criminal mischief, which damages a soldier’s or hero’s memorial, is now a third degree felony, rather than a second or first degree misdemeanor.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide rulemaking authority or require executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 22, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Includes property that is not owned by a governmental entity or museum, historical society, or similar organization.
- Includes memorials for first responders.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.