

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 269 Public Nuisances

**SPONSOR(S):** Judiciary Committee and Criminal Justice Subcommittee, Caruso and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 994

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**FINAL HOUSE FLOOR ACTION:** 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 269 passed the House on April 20, 2023, and subsequently passed the Senate on April 26, 2023.

The bill makes several changes relating to public nuisances as follows:

- Amends s. 403.413, F.S., to prohibit a person from intentionally dumping litter onto private property for the purpose of intimidating or threatening the owner, resident, or invitee of such property, a violation of which is punishable as a first degree misdemeanor. If such litter contains a credible threat, a person commits a third degree felony.
- Creates s. 784.0493, F.S., to prohibit a person from willfully and maliciously harassing or intimidating another person based on the person's wearing or displaying of any indicia relating to any religious or ethnic heritage, a violation of which is punishable as a first degree misdemeanor. If a person commits such a violation and in doing so makes a credible threat, the person commits a third degree felony.
- Amends s. 806.13(6), F.S., to create a new prohibition against knowingly and intentionally displaying or projecting, using any medium, an image onto a building, structure, or other property without the written consent of the owner of the building, structure, or property, a violation of which is punishable as a first degree misdemeanor. If a person displays or projects such an image containing a credible threat, the person commits a third degree felony.
- Creates s. 810.098, F.S., to create a new trespass offense if a person who is not authorized, licensed, or invited willfully enters the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person, and is warned by the state university or Florida College System institution to depart and refuses to do so. A violation is punishable as a first degree misdemeanor.
- Amends s. 871.01(1), F.S. relating to disturbing schools and religious assemblies, to:
  - Require a violation of s. 871.01(1), F.S., to be both willful *and* malicious;
  - Prohibit a person from willfully and maliciously interrupting or disturbing any assembly of people met for the purpose of acknowledging the death of an individual;
  - Increase the penalty for a violation of s. 871.01(1), F.S., from a second degree misdemeanor to a first degree misdemeanor; and
  - Prohibit a person from making a credible threat while willfully and maliciously disturbing a school, religious assembly, any assembly of people met for the purpose of acknowledging the death of an individual, or for any other lawful purpose, a violation of which is punishable as a third degree felony.
- Requires a violation of any provision of the bill that is reclassified under s. 775.085, F.S., to be reported as a hate crime under s. 877.19, F.S.

The bill may have a positive indeterminate prison bed and jail bed impact by creating new felony and misdemeanor offenses.

The bill was approved by the Governor on May 1, 2023, ch. 2023-24, L.O.F., and became effective on that date.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Littering

#### Background

Section 403.413, F.S., prohibits a person from dumping<sup>1</sup> any litter:<sup>2</sup>

- In or on any public highway, road, street, alley, or thoroughfare, including any portion of the right-of-way thereof, or any other public lands, except in containers or areas lawfully provided therefor.
- In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals.
- In or on any private property, unless prior consent of the owner has been given and unless the dumping of such litter by such person will not cause a public nuisance or otherwise be in violation of any other state or local law, rule, or regulation.

The penalty for littering generally corresponds to the amount of litter discarded:<sup>3</sup>

Amount of Litter	Penalty
< 15 pounds or < 27 cubic feet	Noncriminal violation <sup>4</sup>
> 15 pounds but < 500 pounds or > 27 cubic feet but < 100 cubic feet	First degree misdemeanor <sup>5</sup>
> 500 pounds or > 100 cubic feet	Third degree felony <sup>6</sup>

#### Effect of the Bill – Littering

The bill amends s. 403.413, F.S., to prohibit a person from intentionally dumping litter onto private property for the purpose of intimidating or threatening the owner, resident, or invitee of such property. A violation is punishable as a first degree misdemeanor. If a person dumps litter onto private property for the purpose of intimidating the owner, resident, or invitee of such property and such litter contains a credible threat,<sup>7</sup> the person commits a third degree felony. If the penalty for a violation of this

<sup>1</sup> "Dump" means to dump, throw, discard, place, deposit, or dispose of. S. 403.413(2)(f), F.S.

<sup>2</sup> "Litter" means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper; tobacco product; tire; appliance; mechanical equipment or part; building or construction material; tool; machinery; wood; motor vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility; or substance in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

S. 403.413(2)(f), F.S.

<sup>3</sup> S. 403.413(6), F.S.

<sup>4</sup> A "noncriminal violation" means any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. S. 775.08(3), F.S.

<sup>5</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>6</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>7</sup> "Credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. S. 784.048(1)(c), F.S.

subsection is reclassified under s. 775.085, F.S., the bill requires such a violation to be reported as a hate crime under s. 877.19, F.S.<sup>8</sup>

## **Criminal Mischief**

### Background

#### *Criminal Mischief – Generally*

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.<sup>9</sup> The penalty for criminal mischief generally corresponds to the value of the damage:

<b>Value of Damage<sup>10</sup></b>	<b>Penalty</b>
≤ \$200	Second degree misdemeanor
> \$200 but ≤ \$1,000	First degree misdemeanor
> \$1,000	Third degree felony

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction<sup>11</sup> or the nature of the property damaged, including when a person damages a:

- Church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued at greater than \$200.<sup>12</sup>
- A memorial<sup>13</sup> or historic property,<sup>14</sup> if the damage is valued at greater than \$200.<sup>15</sup>
- Public telephone, regardless of the value of the damage.<sup>16</sup>
- Sexually violent predator detention or commitment facility, if the damage is valued at greater than \$200.<sup>17</sup>

### Effect of the Bill – Criminal Mischief

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<sup>8</sup> Section 877.19, F.S., requires all law enforcement agencies in Florida to report monthly to the Florida Department of Law Enforcement (FDLE) incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. FDLE is required to compile such data and, upon request, disseminate such data to any local law enforcement agency, unit of local government, or state agency.

<sup>9</sup> S. 806.13(1)(a), F.S.

<sup>10</sup> S. 806.13(1)(b), F.S.

<sup>11</sup> S. 806.13(1)(b)4., F.S.

<sup>12</sup> S. 806.13(2), F.S.

<sup>13</sup> “Memorial” means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame.
- Florida Medal of Honor Wall.
- Florida Veterans' Hall of Fame.
- POW-MIA Chair of Honor Memorial.
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.
- Florida Law Enforcement Officers' Hall of Fame.
- Florida Holocaust Memorial.
- Florida Slavery Memorial.
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

S. 806.135(1)(b), F.S.

<sup>14</sup> “Historic property” means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. S. 806.135(1)(a), F.S.

<sup>15</sup> S. 806.13(3), F.S.

<sup>16</sup> S. 806.13(4), F.S.

<sup>17</sup> S. 806.13(5), F.S.

The bill amends s. 806.13(6), F.S., to create a new prohibition against knowingly and intentionally displaying or projecting, using any medium, an image onto a building, structure, or other property without the written consent of the owner of the building, structure, or property, a violation of which is punishable as a first degree misdemeanor. If a person displays or projects such an image containing a credible threat, the person commits a third degree felony. The bill defines “image” as a visual representation or likeness of a person or object, including text, graphics, logos, other artwork, or any combination thereof. If the penalty for a violation of this subsection is reclassified under s. 775.085, F.S., the bill requires such a violation to be reported as a hate crime under s. 877.19, F.S.

## **Harassment or Intimidation**

### Background

A person commits trespass, punishable as a second degree misdemeanor, on a property other than a structure or conveyance if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains on such property with the intent to commit an offense thereon, other than the offense of trespass.<sup>18</sup>

A person commits a first degree misdemeanor if he or she commits a trespass and, in doing so:

- Defies an order to leave that is personally communicated to such person by the owner of the premises or by an authorized person;
- Willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom;
- Unlawfully dumps litter on property; or
- Trespasses on property other than a structure or conveyance.<sup>19</sup>

### Effect of the Bill – Harassment or Intimidation

The bill creates s. 810.098, F.S., to create a new trespass offense if a person who is not authorized, licensed, or invited willfully enters the campus of a state university<sup>20</sup> or Florida College System institution for the purpose of threatening or intimidating another person, and is warned by the state university or Florida College System institution<sup>21</sup> to depart and refuses to do so. A violation is punishable as a first degree misdemeanor. If the penalty is reclassified under s. 775.085, F.S., the bill requires such a violation to be reported as a hate crime under s. 877.19, F.S.

The bill creates s. 784.0493, F.S., to prohibit a person from willfully and maliciously harassing<sup>22</sup> or intimidating another person based on the person’s wearing or displaying of any indicia relating to any religious or ethnic heritage. A violation is punishable as a first degree misdemeanor. A person commits a third degree felony if he or she makes a credible threat while committing such a violation. Any violation of this section is considered a hate crime for purposes of the reporting requirements of s. 877.19, F.S.

## **Disturbing Schools and Religious and Other Assemblies**

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<sup>18</sup> S. 810.09(1)(a), F.S.

<sup>19</sup> S. 810.09(2)(b), F.S.

<sup>20</sup> “State university” includes 12 public postsecondary institutions, such as the University of Florida, Florida State University, the University of Central Florida, and the Florida Agricultural and Mechanical University. S. 1000.21(6), F.S.

<sup>21</sup> “Florida College System institution” includes 28 public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of such institutions, and includes institutions such as Miami-Dade College, Hillsborough College, Valencia Community College, and Tallahassee Community College. S. 1000.21(3), F.S.

<sup>22</sup> “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. S. 784.048(1)(a), F.S.

## Background

Section 871.01(1), F.S., prohibits a person from willfully interrupting or disturbing any school or any assembly of people met for the worship of God or for any lawful purpose, a violation of which is punishable as a second degree misdemeanor.

## Effect of the Bill – Disturbing School and Religious and Other Assemblies

The bill amends s. 871.01(1), F.S., to require a violation to be both willful *and* malicious, and to prohibit a person from willfully and maliciously interrupting or disturbing any assembly of people for the purpose of acknowledging the death of an individual. Under the bill, any violation of s. 871.01(1), F.S., is *increased* to a first degree misdemeanor. If a person commits a violation and in doing so makes a credible threat, a violation is punishable as a third degree felony. If the penalty is reclassified under s. 775.085, F.S., the bill requires for such a violation to be reported as a hate crime under s. 877.19, F.S.

The bill became effective on May 1, 2023.

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

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have a positive indeterminate prison bed impact by creating new felony offenses.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill may have a positive indeterminate jail bed impact by creating new misdemeanor offenses.

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

None.

### D. FISCAL COMMENTS:

None.