

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 269 Public Nuisances
SPONSOR(S): Caruso and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 269 makes several changes relating to public nuisances as follows:

- Amends s. 403.413, F.S., to prohibit a person from distributing pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public place, including outside a private residence, when such distribution leads to littering, a violation of which is punishable as a first degree misdemeanor. If the materials distributed evidence religious or ethnic animus, a violation is punishable as a third degree felony.
- Amends s. 784.048, F.S., to prohibit a person from willfully following, harassing, or interfering with another person's quiet enjoyment based on the person's wearing of religious-based garments or garments commonly associated with a particular religious or ethnic group or any other indicia of any religious or ethnic heritage. A violation is considered aggravated stalking and punishable as a third degree felony.
- Amends s. 806.13(2), F.S., to:
 - Remove the \$200 damage threshold required for damage to a church, synagogue, mosque, or a religious article therein to be punishable as a third degree felony.
 - Prohibit a person, punishable as a third degree felony, from willfully and maliciously defacing, injuring, or damaging any:
 - Religious cemetery, gravesite, or grave marker with a religious symbol;
 - Memorial, plaque, statue, or museum with any indicia of any religious or ethnic heritage, including any Holocaust Memorial;
 - School or community center with any indicia of any religious or ethnic heritage; or
 - Public or private property that evidences religious or ethnic animus.
- Amends s. 806.13(6), F.S., to create a new prohibition on projecting an image outdoors onto a publicly or privately owned building or other property, without written consent of the owner of the building or other property, a violation of which is punishable as a first degree misdemeanor. If the image projected exhibits religious or ethnic animus, a violation is punishable as a third degree felony.
- Amends s. 871.01(1), F.S., to prohibit a person from willfully interrupting or disturbing any assembly of people for the purpose of acknowledging the death of an individual, a violation of which is punishable as second degree misdemeanor. If a person exhibits religious or ethnic animus while interrupting or disturbing a school, any assembly of people met for the worship of God, any assembly of people for the purpose of acknowledging the death of an individual, or for any other lawful purpose, a violation is punishable as a third degree felony.

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

The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Littering

Background

Section 403.413, F.S., prohibits a person from dumping¹ any litter:²

- 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:³

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

Effect of Proposed Changes – Littering

HB 269 amends s. 403.413, F.S., to prohibit a person from distributing pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public place, including outside a private residence, when such distribution leads to littering, a violation of which is punishable as a first degree misdemeanor. If the materials distributed evidence religious or ethnic animus, a violation is punishable as a third degree felony and is considered a hate crime for purposes of the reporting requirements in s. 877.19, F.S.⁷

Stalking

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

² "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.

³ S. 403.413(6), F.S.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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

Background

Section 784.048, F.S., prohibits a person from willfully, maliciously, and repeatedly following, harassing,⁸ or cyberstalking⁹ another person, a violation of which is punishable as a first degree misdemeanor.

A person commits aggravated stalking if he or she willfully, maliciously, and repeatedly follows, harasses, or cyberstalks:

- Another person, and makes a credible threat¹⁰ to that person;
- A child under 16 years of age;
- Another person who has been granted an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, F.S., or an injunction for protection against domestic violence pursuant to s. 741.30, F.S., or after any other court-imposed prohibition of conduct toward the subject person or that person's property; or
- A person who, after having been sentenced for a violation of s. 794.011, F.S.,¹¹ s. 800.04, F.S.,¹² or s. 847.0135(5), F.S.,¹³ is prohibited from contacting the victim of the offense under s. 921.244, F.S.

Effect of Proposed Changes – Stalking

The bill amends s. 784.048, F.S., to prohibit a person from willfully following, harassing, or interfering with another person's quiet enjoyment based on the person's wearing of religious-based garments or garments commonly associated with a particular religious or ethnic group or any other indicia of any religious or ethnic heritage. A violation is considered aggravated stalking and punishable as a third degree felony. The bill requires a violation to be reported as a hate crime under s. 877.19, F.S.

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.¹⁴ The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage ¹⁵	Penalty
≤ \$200	Second degree misdemeanor
> \$200 but ≤ \$1,000	First degree misdemeanor

⁸ "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.

⁹ "Cyberstalk" means:

- To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or
- To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person's permission, causing substantial emotional distress to that person and serving no legitimate purpose.

S. 784.048(1)(d), F.S.

¹⁰ "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.

¹¹ Sexual battery.

¹² Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

¹³ Offense relating to computer pornography.

¹⁴ S. 806.13(1)(a), F.S.

¹⁵ S. 806.13(1)(b), F.S.

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction¹⁶ 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 \$200.¹⁷
- A memorial¹⁸ or historic property,¹⁹ if the damage is valued at greater than \$200.²⁰
- Public telephone, regardless of the value of the damage.²¹
- Sexually violent predator detention or commitment facility, if the damage is valued at greater than \$200.²²

Effect of Proposed Changes – Criminal Mischief

Criminal Mischief– Religious or Ethnic Animus

The bill amends s. 806.13(2), F.S., to remove the \$200 damage threshold required for damage to a church, synagogue, mosque, or a religious article therein to be punishable as a third degree felony. Under the bill, a person who willfully and maliciously defaces, injures, or damages a church, synagogue, mosque, or religious article therein is subject to a third degree felony, regardless of the amount of damage caused.

The bill prohibits a person from willfully and maliciously defacing, injuring, or damaging any:

- Religious cemetery, gravesite, or grave marker with a religious symbol;²³
- Memorial, plaque, statue, or museum with any indicia of any religious or ethnic heritage, including any Holocaust Memorial;
- School or community center with any indicia of any religious or ethnic heritage; or
- Public or private property that evidences religious or ethnic animus.

A violation is punishable as a third degree felony and is considered a hate crime for purposes of the reporting requirement in s. 877.19, F.S.

The bill provides that a person commits criminal mischief under this subsection if he or she commits an act that “includes any physical manifestations of anti-Semitism directed toward a Jewish or non-Jewish individual or his or her property or toward Jewish community institutions or religious facilities, Jewish

¹⁶ S. 806.13(1)(b)4., F.S.

¹⁷ S. 806.13(2), F.S.

¹⁸ “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.

¹⁹ “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.

²⁰ S. 806.13(3), F.S.

²¹ S. 806.13(4), F.S.

²² S. 806.13(5), F.S.

²³ Section 872.02(1), F.S., prohibits a person from willfully and knowingly destroying, mutilating, defacing, injuring, or removing any tomb, monument, gravestone... or other structure or thing placed or designed for a memorial of the dead...”, a violation of which is punishable as a third degree felony.

cemeteries, or Jewish gravesites. Such expression includes the use of a Nazi symbol such as a swastika.”

Criminal Mischief – Projecting Images

The bill amends s. 806.13(6), F.S., to create a new prohibition against projecting an image outdoors onto a publicly or privately owned building or other property, without written consent of the owner of the building or other property, a violation of which is punishable as a first degree misdemeanor. If the image projected exhibits religious or ethnic animus, a violation is punishable as a third degree felony and is a hate crime for purposes of the reporting requirements of s. 877.19, F.S.

Disturbing Schools and Religious and Other Assemblies

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 Proposed Changes – Disturbing School and Religious and Other Assemblies

The bill amends s. 871.01(1), F.S., to prohibit a person from willfully interrupting or disturbing any assembly of people for the purpose of acknowledging the death of an individual, a violation of which is punishable as second degree misdemeanor. If a person exhibits religious or ethnic animus while interrupting or disturbing a school, any assembly of people met for the worship of God, any assembly of people for the purpose of acknowledging the death of an individual, or for any other lawful purpose, a violation is punishable as a third degree felony and is a hate crime for the purposes of the reporting requirements of s. 877.19, F.S.

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 403.413, F.S., relating to Florida Litter Law.

Section 2: Amends s. 784.048, F.S., relating to stalking; definitions; penalties.

Section 2: Amends s. 806.13, F.S., relating to criminal mischief; penalties; penalty for minor.

Section 3: Amends s. 871.01, F.S., relating to disturbing school and religious and other assemblies.

Section 4: Provides an effective date of October 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

This bill implicates the First Amendment. In *R.A.V. v. City of Saint Paul*, 505 U.S. 377 (1992), the United States Supreme Court considered the constitutionality of an ordinance that criminalized placing "...a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender..." The Supreme Court held that the ordinance was facially unconstitutional because, even though the ordinance sought to regulate "fighting words," which is constitutionally permissible, the ordinance drew distinctions between different types of fighting words based on the content of their subject matter and viewpoint. The Supreme Court held that the city could not impose special prohibitions on those speakers who express views on disfavored subjects of "race, color, creed, religion, or gender," while permitting other speech containing "abusive invective" as long as it was not related to such disfavored subjects. The Supreme Court also held that the ordinance effectively amounted to actual viewpoint discrimination because persons arguing *in favor* of racial or religious tolerance and equality were essentially allowed to use "fighting words" that could not be used by those speakers' opponents.

In considering the constitutionality of s. 775.085, F.S., in *State v. Stadler*, 630 So. 2d 1072 (Fla. 1994), which reclassifies a felony or misdemeanor offense to the next higher degree if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age of the victim, the Florida Supreme Court held that the question of constitutionality turns on whether the statute applies to enhance the penalty for bias-motivated crimes, or whether the statute applies more broadly to prejudicial acts that happen to occur during the commission of a criminal act. The Florida Supreme Court held that s. 775.085, F.S., was constitutional because the process of selecting a crime victim on the basis of prejudice is not protected speech under the First Amendment and may be proscribed. Conversely, the expression of bias while committing an offense is pure expression and cannot be selectively banned.

For purposes of the prohibition against stalking in s. 784.048, F.S., the term "harass" is defined in s. 784.048(1)(a), F.S., to mean "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." The term "course of conduct" is defined in s. 784.048(1)(b), F.S., as "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose," excluding constitutionally protected activity. Courts have interpreted the prohibition against stalking under s. 784.048, F.S., to require proof of repeated acts. *Lukacs v. Luton*, 982 So. 2d 1217 (Fla. 1st DCA 2008).

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES