

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 1 N	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

CS/HB 269 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 residential property that evidences religious or ethnic animus for the purpose of intimidating or threatening the owner or resident of such property. 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.
- Creates s. 784.0493, F.S., to prohibit a person from willfully and maliciously harassing, threatening, 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 third degree felony and is required to be reported as a hate crime under s. 877.19, F.S.
- 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:
    - Cemetery, grave, or memorial which the person knows, or should reasonably have known, is associated with a particular religious or ethnic heritage; or
    - School or community center which a person knows, or should reasonably have known, is associated with a particular religious or ethnic heritage.
- Amends s. 806.13(6), F.S., to create a new prohibition against 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.
- 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., 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; and
  - Increase the penalty for a violation of s. 871.01(1), F.S., from a second degree misdemeanor to a first degree misdemeanor.

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 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 Proposed Changes – Littering

CS/HB 269 amends s. 403.413, F.S., to prohibit a person from intentionally dumping litter onto private residential property that evidences religious or ethnic animus for the purpose of intimidating or threatening the owner or resident of such property. 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.<sup>7</sup>

#### Criminal Mischief

<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> 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

### *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>8</sup> The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage <sup>9</sup>	Penalty
≤ \$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>10</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>11</sup>
- A memorial<sup>12</sup> or historic property,<sup>13</sup> if the damage is valued at greater than \$200.<sup>14</sup>
- Public telephone, regardless of the value of the damage.<sup>15</sup>
- Sexually violent predator detention or commitment facility, if the damage is valued at greater than \$200.<sup>16</sup>

### Effect of Proposed Changes – Criminal Mischief

#### *Criminal Mischief – Memorials, Schools, and Community Centers*

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:

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<sup>8</sup> S. 806.13(1)(a), F.S.

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

<sup>10</sup> S. 806.13(1)(b)4., F.S.

<sup>11</sup> S. 806.13(2), F.S.

<sup>12</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>13</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>14</sup> S. 806.13(3), F.S.

<sup>15</sup> S. 806.13(4), F.S.

<sup>16</sup> S. 806.13(5), F.S.

- Cemetery, grave,<sup>17</sup> or memorial<sup>18</sup> which the person knows, or reasonably should have known, is associated with a particular religious or ethnic heritage; or
- School or community center which the person knows, or reasonably should have known, is associated with a particular religious or ethnic heritage.

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 defines a “school” as the facility of any early learning, prekindergarten, kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.

The bill defines a “community center” in accordance with s. 893.13(1)(c), F.S., to mean a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public.

### *Criminal Mischief– Projecting Images*

The bill amends s. 806.13(6), F.S., to create a new prohibition against 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. 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 a person displays or projects an image that evidences religious or ethnic animus, including anti-Semitism as described in s. 1000.05(8), F.S.,<sup>19</sup> during the commission of such an offense, it is prima facie evidence that such person has evidenced prejudice in the commission of the offense for purposes of reclassifying the penalty under s. 775.085, F.S.<sup>20</sup> 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**

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<sup>17</sup> 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.

<sup>18</sup> See note 12 *supra*.

<sup>19</sup> “Anti-Semitism” includes a certain perception of the Jewish people, which maybe expressed as hatred toward Jewish people, rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities.

- Examples of anti-Semitism include:
  - Calling for, aiding, or justifying the killing or harming of Jews, often in the name of a radical ideology or an extremist view of religion.
  - Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective, especially, but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
  - Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, the State of Israel, or even for acts committed by non-Jews.
  - Accusing Jews as a people or the State of Israel of inventing or exaggerating the Holocaust.
  - Accusing Jewish citizens of being more loyal to Israel, or the alleged priorities of Jews worldwide, than to the interest of their own nations.
- Examples of anti-Semitism related to Israel include:
  - Demonizing Israel by using the symbols and images associated with classic anti-Semitism to characterize Israel or Israelis, drawing comparisons of contemporary Israeli policy to that of the Nazis, or blaming Israel for all inter-religious or political tensions.
  - Applying a double standard to Israel by requiring behavior of Israel that is not expected or demanded of any other democratic nation or focusing peace or human rights investigations only on Israel.
  - Delegitimizing Israel by denying the Jewish people their right to self-determination and denying Israel the right to exist.

<sup>20</sup> Section 775.085, F.S., reclassifies the penalty for any felony or misdemeanor to the next higher degree if the commission of such felony or misdemeanor evidences prejudice based on the race, color, ancestry, ethnicity, religious, sexual orientation, national origin, homeless status, or advanced age of the victim.

## 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>21</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>22</sup>

## Effect of Proposed Changes – 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>23</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>24</sup> to depart and refuses to do so. A violation is punishable as a first degree misdemeanor.

If a person evidences religious or ethnic animus, including anti-Semitism as described in s. 1000.05(8), F.S., during the commission of a trespass under s. 810.098, F.S., it is prima facie evidence that such person has evidenced prejudice in the commission of the offense for purposes of reclassifying the penalty under s. 775.085, F.S. 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>25</sup> threatening, 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 third degree felony and is considered a hate crime for 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

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<sup>21</sup> S. 810.09(1)(a), F.S.

<sup>22</sup> S. 810.09(2)(b), F.S.

<sup>23</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>24</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>25</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.

The bill amends s. 871.01(1), F.S., 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 evidences religious or ethnic animus, including anti-Semitism as described in s. 1000.05(8), F.S., during the commission of such an offense, it is prima facie evidence that such person has evidenced prejudice during the commission of the offense for the purpose of reclassifying the penalty under s. 775.085, F.S. If a 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 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:** Creates s. 784.0493, F.S., relating to harassment or intimidation based on religious or ethnic heritage.

**Section 3:** Amends s. 806.13, F.S., relating to criminal mischief; penalties; penalty for minor.

**Section 4:** Creates s. 810.098, F.S., relating to trespass for the purpose of threatening or intimidating another person.

**Section 5:** Amends s. 871.01, F.S., relating to disturbing school and religious and other assemblies.

**Section 6:** 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.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

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

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 7, 2023, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the offense of littering and related penalties by amending s. 403.413, F.S., to prohibit a person from intentionally dumping litter onto private residential property that evidences religious or ethnic animus for the purpose of intimidating or threatening the owner or resident of such property, a violation of which is punishable as a third degree felony.
- Revised the offense of aggravated stalking to create the new crime of harassment or intimidation based on religious or ethnic heritage in s. 784.0493, F.S., which prohibits a person from willfully and maliciously harassing, threatening, 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 third degree
- Added definitions of the terms "school" and "community center" in s. 806.13(6), F.S.
- Revised the offense of criminal mischief in s. 806.13(6), F.S., to require, for a third degree felony, that a person must know, or reasonably should have known, that he or she was defacing, injuring,

or damaging a cemetery, grave, memorial, school, or community center that is associated with a particular religious or ethnic heritage.

- Defined the term “image” in s. 806.13(6), F.S., and required a violation to be knowing and intentional.
- Created 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.
- Added provisions specifying that if a person evidences religious or ethnic animus, including anti-Semitism as described in s. 1000.05(8), F.S., during the commission of the offenses of criminal mischief by displaying or projecting an image, trespassing for the purpose of threatening or intimidating another person, or disturbing schools and religious and other assemblies, it is prima facie evidence that such person has evidenced prejudice in the commission of such offenses for purposes of reclassifying the penalty under s. 775.085, F.S.
- Amended s. 871.01(1), F.S., 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; and
  - Increase the penalty for a violation of s. 871.01(1), F.S., from a second degree misdemeanor to a first degree misdemeanor.

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