

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 994

INTRODUCER: Criminal Justice Committee and Senator Calatayud and others

SUBJECT: Public Nuisances

DATE: April 21, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|------------------|
| 1. | <u>Erickson</u> | <u>Stokes</u> | <u>CJ</u> | Fav/CS |
| 2. | <u>Atchley</u> | <u>Harkness</u> | <u>ACJ</u> | Favorable |
| 3. | <u>Erickson</u> | <u>Twogood</u> | <u>RC</u> | Favorable |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 994 makes several changes relating to public nuisances, especially regarding certain acts that evidence religious or ethnic animus, by:

- Providing that it is a third degree felony to intentionally dump onto private property litter that evidences religious or ethnic animus toward an owner or invitee of such property.
- Providing that it is a third degree felony to willfully and maliciously harass, threaten, or intimidate another person based on the person's wearing or displaying of any indicia relating to any religious or ethnic heritage.
- Providing that it is a third degree felony to willfully and maliciously deface, injure, or damage by any means any cemetery, grave, or memorial or any school or community center which the person knows, or reasonably should have known, is associated with a particular religious or ethnic heritage.
- Providing that it is a first degree misdemeanor to knowingly and intentionally display or project, 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. If a person displays or projects an image that evidences religious or ethnic animus during commission of the offense, it is prima facie evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crime reclassification.
- Providing that is a first degree misdemeanor for a person, without being authorized, licensed, or invited, to willfully enter 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. If a

person evidences religious or ethnic animus during commission of the offense, it is prima facie evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crimes reclassification.

- Revising a current offense in s. 871.01, F.S., relating to disturbing a school or place of worship, to increase the degree of the offense from a second degree misdemeanor to a first degree misdemeanor. If a person evidences religious or ethnic animus during commission of the offense, it is prima facie evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crime classification.

The bill also requires hate crime-reporting for the described offenses and defines key terms.

The bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Noncriminal Infraction of Florida Litter Law

Section 403.413, F.S., is the Florida Litter Law. Section 403.413(4), F.S., provides that, unless otherwise authorized by law or permit, it is unlawful for any person to dump litter in any manner or amount:

- 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. When any litter is thrown or discarded from a motor vehicle, the operator or owner of the motor vehicle, or both, shall be deemed in violation of this section;
- In or on any freshwater lake, river, canal, or stream or tidal or coastal water of the state, including canals. When any litter is thrown or discarded from a boat, the operator or owner of the boat, or both, shall be deemed in violation of this section; or
- 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.

Section 403.413(6)(a), F.S., provides that any person who dumps litter in violation of s. 403.413(4), F.S., in an amount not exceeding 15 pounds in weight or 27 cubic feet in volume and not for commercial purposes commits a noncriminal infraction, punishable by a civil penalty of \$150, from which \$50 is deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095, F.S. In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

Stalking and Aggravated Stalking

Section 784.048(2), F.S., provides that it is a first degree misdemeanor¹ to willfully, maliciously, and repeatedly follow, harass,² or cyberstalk³ another person.

A person commits aggravated stalking, a third degree felony,⁴ if the person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks:

- Another person, and makes a credible threat⁵ 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. (sexual battery), s. 800.04, F.S. (lewd or lascivious offenses), or s. 847.0135(5), F.S. (computer pornography offenses), is prohibited from contacting the victim of the offense under s. 921.244, F.S.⁶

Criminal Mischief

Section 806.13, F.S., provides that a person commits criminal mischief by willfully and maliciously injuring or damaging by any means any real or personal property belonging to another, including by placement of graffiti or other acts of vandalism. The penalty for criminal mischief generally corresponds to the cost of the damage. It is a:

- Second degree misdemeanor⁷ if the damage is \$200 or less;
- First degree misdemeanor if the damage is greater than \$200 but less than \$1,000; and
- Third degree felony if the damage is \$1,000 or greater or 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.⁸

¹ A first degree misdemeanor is punishable by not more than 1 year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

² "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. Section 784.048(1)(a), F.S.

³ "Cyberstalk" means: (1) 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 (2) 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. Section. 784.048(1)(d), F.S.

⁴ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

⁵ "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.

⁶ Section 784.048(3)-(5) and (7), F.S.

⁷ A second degree misdemeanor is punishable by not more than 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

⁸ Section 806.13(1)(a) and (b)1.-3., F.S.

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

- Church, synagogue, mosque, or other place of worship, or any religious article contained therein, if the damage to the property is greater than \$200;
- Memorial or historic property, if the damage is greater than \$200;
- Public telephone and other communication apparatuses, regardless of the value of the damage; or
- Sexually violent predator detention or commitment facility or any property contained therein, if the damage is valued greater than \$200.⁹

A person who commits criminal mischief by placement of graffiti must also pay a fine, which increases based on the number of convictions, and perform community service.¹⁰ A minor who commits a delinquent act of criminal mischief is also subject to additional penalties.¹¹

Disturbing Schools and Religious and Other Assemblies

Section 871.01(1), F.S., provides that it is second degree misdemeanor to willfully interrupt or disturb any school or any assembly of people met for the worship of God or for any lawful purpose.

Unlawful Protests

Section 871.015, F.S., provides that it is a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place. This section does not prohibit protest activities that occur adjacent to that portion of a funeral procession which extends beyond 500 feet of the property line of the location of the funeral or burial.¹²

Hate-Crime Reporting

Section 877.19, F.S., Florida's Hate Crimes Reporting Act, requires the Governor, through the Florida Department of Law Enforcement (FDLE), to collect and disseminate data on incidents of criminal acts that evidence prejudice based on race, religion, ethnicity, color, ancestry, sexual orientation, or national origin. All law enforcement agencies must report monthly to the FDLE concerning such offenses in such form and in such manner as prescribed by rules adopted by the department. This information is compiled by the FDLE and disseminated upon request to any local law enforcement agency, unit of local government, or state agency.¹³

⁹ Section 806.13(1)(b) 4. and (2)-(5), F.S.

¹⁰ Section 806.13(7)(a) and (b), F.S.

¹¹ Section 806.13(7)(c), (8), and (9), F.S.

¹² Section 871.015(2) and (3), F.S.

¹³ Section 877.19(2), F.S. This information is confidential and exempt from public disclosure. Data required pursuant to this section is used only for research or statistical purposes and does not include any information that may reveal the identity of an individual victim of a crime. Section 877.19(3), F.S.

III. Effect of Proposed Changes:

The bill makes several changes relating to public nuisances, especially regarding certain acts that evidence religious or ethnic animus.

Littering

The bill amends s. 403.413, F.S., the Florida Litter Law, to provide that it is a third degree felony to intentionally dump onto private property litter that evidences religious or ethnic animus toward an owner or invitee of such property.

Harassment or Intimidation

The bill creates s. 784.0493, F.S., which provides that it is a third degree felony to willfully and maliciously harass, threaten, or intimidate another person based on the person's wearing or displaying of any indicia relating to any religious or ethnic heritage.

Criminal Mischief

The bill amends s. 806.13, F.S., to provide that it is a third degree felony to willfully and maliciously deface, injure, or damage by any means any cemetery, grave, or memorial as defined in s. 806.135, F.S., or any school or community center as defined in s. 893.13(1)(c), F.S., which the person knows, or reasonably should have known, is associated with a particular religious or ethnic heritage.

The bill also amends this section to provide that it is a first degree misdemeanor to knowingly and intentionally display or project, 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. If a person displays or projects an image that evidences religious or ethnic animus during commission of the offense, it is prima facie evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crime reclassification.

Trespass

The bill creates s. 810.098, F.S., which provides that it is a first degree misdemeanor for a person, without being authorized, licensed, or invited, to willfully enter 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. If a person evidences religious or ethnic animus during commission of the offense, it is prima facie evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crimes reclassification.

Disturbing Schools and Places of Worship

The bill amends s. 871.01, F.S., which punishes disturbing a school or place of worship. Currently, the offense requires willfulness. The bill adds malice. The bill also increases the degree of the offense from a second degree misdemeanor to a first degree misdemeanor. If a person evidences religious or ethnic animus during commission of the offense, it is prima facie

evidence the person has evidenced prejudice in the commission of the offense for the purpose of hate-crime reclassification.

Hate-Crime Reporting

The previously described offenses are subjected to hate-crime reporting.

Terminology

The bill defines the following terms where they appear in the bill:

- “Animus” includes intent to intimidate or threaten or intent to do harm.
- “Florida College System institution” has the same meaning as in s. 1000.21(3), F.S.
- “Harass” has the same meaning as in s. 784.048, F.S., which defines the term as engaging in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.
- “Image” means a visual representation or likeness of a person or object, including text, graphics, logos, other artwork, or any combination thereof.
- “School” means the grounds or facility of any early learning center, prekindergarten, kindergarten, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or private.
- “State university” has the same meaning as in s. 1000.21(6), F.S.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

If a question arises about whether the bias-evidencing crimes created by the bill implicate the First Amendment, the Florida Supreme Court’s opinion in *State v. Stadler*¹⁴ may provide some guidance in answering that question.

In *State v. Stadler*, the Florida Supreme Court held that s. 775.085, F.S., Florida’s hate crimes law,¹⁵ did not violate the First Amendment. In its analysis of s. 775.085, F.S., the Court determined that s. 775.085, F.S., is a bias-evidencing law and explained that a bias-evidencing crime is “any crime wherein the perpetrator ‘evidences prejudice’ based on one or more of the enumerated characteristics of the victim ‘while committing [the] offense.’”¹⁶ The court further explained that a bias-evidencing crime “has been viewed as embracing two broad classes of offenses.”¹⁷ The first class consists of “offenses committed because of prejudice. For instance, A beats B because B is a member of a particular racial group.”¹⁸ For this class, “[t]he targeted activity—the selection of a victim—is an integral part of the underlying crime. As such, the conduct is not protected speech at all, but rather falls outside the First Amendment and may be banned.”¹⁹ The Court construed Florida’s hate crimes law as embracing only bias-motivated crimes, and therefore, falling within this class.

The second class consists of “those offenses committed for some reason other than prejudice but that nevertheless show bias in their commission. For example, A beats B because of jealousy, but in the course of the battery calls B a racially derogatory term.”²⁰ For this class, expression of bias is targeted and this expression is “related to the underlying crime in only the most tangential way: The expression and crime share the same temporal framework, nothing more.”²¹ Bias-evidencing crimes in this class violate the First Amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁴ 630 So.2d 1072 (Fla. 1974).

¹⁵ Subsequent to *Stadler*, the Legislature created a second hate crimes law, s. 775.0863, F.S., which reclassifies the misdemeanor or felony degree of an offense if the commission of that offense evidences prejudice based on mental or physical disability of the victim.

¹⁶ *Stadler*, *supra*, at 1076, quoting s. 775.085, F.S.

¹⁷ *Stadler*, *supra*, at 1076 (citations omitted).

¹⁸ *Stadler*, *supra*, at 1076.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections. The CJIC provides the following additional information regarding its estimate:

In FY 18-19, the incarceration rate for a Level 1, 3rd degree felony was 9.1%, and in FY 19-20 the incarceration rate was 8.2%. In FY 20-21, the incarceration rate for a Level 1, 3rd degree felony was 7.5%, and in FY 21-22 the incarceration rate was 8.6%.

Per data obtained from the Department of Environmental Protection's Schedule I found on the Florida Fiscal Portal, there are estimated to be a maximum of 800 people who receive citations under s. 403.413, F.S.[,] for littering less than 15 pounds each fiscal year. It is not known how many of these people would fit the criteria listed for the new misdemeanor and felony created for this statute.

Per [Florida Department of Law Enforcement or] FDLE, there were 638 misdemeanor stalking arrests (s. 784.048(2), F.S.) in FY 21- 22, with 280 guilty/convicted charges and 80 adjudication withheld charges. Per [Department of Corrections or] DOC, in FY 18-19, there were 74 new commitments for aggravated stalking, and in FY 19-20, there were 62 new commitments. In FY 20-21, there were 67 new commitments, and in FY 21-22, there were 68 new commitments. It should be noted that over half of these involved violating court orders. Furthermore, it is not known if offenders fitting the bill's criteria are already included in these numbers.

Per FDLE, there were 2,978 misdemeanor criminal mischief arrests (s. 806.13(1)(b)1., F.S.) in FY 21-22, with 1,587 guilty/convicted charges and 430 adjudication withheld charges. Per DOC, there have been no new commitments to prison in the last four fiscal years under the current version of the Level 1, 3rd degree felony for "any 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." Furthermore, there is no data available regarding image projections that evidence "religious or ethnic intimidation, threat, or intent to harm."

Per FDLE, in FY 21-22, there were 35 arrests under the current 2nd degree misdemeanor language for disturbance of a school, church, or other assembly. There were also 4 guilty/convicted charges and 9 adjudication withheld charges.

Per Uniform Crime Reports, in CY 2021, there were 5 arrests for crimes evidencing prejudice with a religious bias. Of those arrests, 4 were Anti-Jewish and one was Anti-Catholic. While this new language does create multiple

felonies, the number of potential offenders is not known, so the impact on the prison population cannot be quantified.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.413, 784.048, 806.13, and 871.01.

This bill creates the following sections of the Florida Statutes: 784.0493 and 810.098.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 27, 2023:

The committee substitute:

- Revises elements of new offenses relating to littering, harassment, and criminal mischief, including damaging any cemetery, grave, or memorial or any school or community center, unlawfully projecting images on buildings. It also revises the current offense relating to disturbing a school or place of worship to increase the penalty from a second degree misdemeanor to a first degree misdemeanor. Some offenses require evidence of religious or ethnic animus.
- Creates s. 810.098, F.S., which provides it is a first degree misdemeanor for a person to trespass on the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person, and the person is warned to depart and refuses to do so.
- Specifies what constitutes prima facie evidence for purpose of hate crimes penalty reclassification.
- Defines terminology.
- Requires hate-crime reporting.
- Changes the effective date from October 1, 2023, to upon becoming a law.

²² SB 994 – Public Nuisances, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
