

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: January 13, 1998 Revised: _____

Subject: Criminal Mischief

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Erickson</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>CA</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

Senate Bill 444 amends provisions relating to criminal mischief to reclassify a misdemeanor offense of criminal mischief to a third degree felony if the person has one or more previous convictions of misdemeanor criminal mischief. The bill provides that it is the intent of the Legislature for municipalities and counties not to be preempted by state law from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses, or from providing higher penalties than those provided by state law and mandatory penalties when state law provides for discretionary penalties. Penalties include fines, up to a circumscribed amount, community service, restitution, and forfeiture.

Upon a finding that a juvenile has violated a graffiti-related ordinance, no court acting under chapter 39, F.S., may provide a disposition of the case that is less severe than any mandatory penalty prescribed by municipal or county ordinance for such violation. A law enforcement officer is authorized to make an arrest without a warrant when the officer has probable cause to believe that a person has committed an act of criminal mischief or graffiti-related offense.

This bill substantially amends ss. 806.13 and 901.15, F.S.

II. Present Situation:

Section 125.69(1), F.S., provides, in part, that upon conviction of a violation of a county ordinance, the violator shall be punished by a fine not to exceed \$500 (except where the county must carry out a federally mandated program).

Section 162.21(5), F.S., provides, in part, that a county or a municipality is authorized to enforce codes and ordinances under the provisions of this section if a county or municipality chooses to

enforce codes or ordinances under the provisions of this section. Each code or ordinance, or ordinance enacted to establish implementation procedures, must provide a maximum civil penalty not to exceed \$500.

Section 806.13, F.S., proscribes criminal mischief by making it illegal to willfully and maliciously injure or damage by any means any real or personal property belonging to another, including, but not limited to, the placement of graffiti on such property or other acts of vandalism. If damage to property is \$200 or less, the offense is a second degree misdemeanor. If damage to the property is greater than \$200 but less than \$1000, then the offense is a first degree misdemeanor.

Section 806.13, F.S., does not expressly preempt the state regulation of graffiti. However, in *Thomas v. State*, 614 So.2d 468, (Fla. 1993), the Florida Supreme Court explained as follows:

Municipal ordinances are inferior to the laws of the state and must not conflict with any controlling provision of a statute. As this court stated in *Rinzler v. Carson*, 262 So.2d 661, 668 (Fla. 1972), ‘a municipality cannot forbid what the legislature has expressly licensed, authorized or required, nor may it authorize what the legislature has expressly forbidden.’ Although municipalities and the state may legislate concurrently in areas that are not expressly preempted by the state, a municipality’s concurrent legislation must not conflict with state law. While a municipality may provide a penalty less severe than that imposed by a state statute, an ordinance penalty may not exceed the penalty imposed by the state. [citations omitted.]

If damage to the property is \$1000 or greater, or if there is an interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service costing \$1000 or more in labor and supplies to restore, the offense is a third degree felony.

Under s. 806.13, F.S., it is also a third degree felony to willfully and maliciously deface, injure, or damage by any means a church, synagogue, mosque, or other place of worship, or any religious article contained in a place of worship. It is also a third degree felony to destroy or substantially damage, without the owner’s consent, any public telephone or telephone cables, wire fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, if the damage makes the telephone inoperative or opens the body of the telephone, provided that a conspicuous notice of the provisions of the criminal mischief statute is posted on or near the destroyed or damaged instrument and is visible to the public at the time the offense is committed.

Any person who violates s. 806.13, F.S., may, in addition to any other criminal penalty, be required to pay for the damages caused by the offense.

Section 901.15, F.S., provides the conditions that must exist in order for a law enforcement officer to make an arrest without a warrant. Section 901.15(7), F.S., authorizes a law enforcement officer to make an arrest without a warrant when there is probable cause to believe

that the person has committed: (1) an act of domestic violence; (2) child abuse; or (3) any battery upon another person, subject to certain conditions.

Chapter 39, F.S., establishes guidelines for proceedings relating to juveniles.

III. Effect of Proposed Changes:

Senate Bill 444 amends s. 806.13, F.S., to reclassify a misdemeanor offense of criminal mischief to a third degree felony if the person has one or more previous convictions for misdemeanor criminal mischief.

The bill creates two provisions relating to preemption. The first provision provides that it is the intent of the Legislature for municipalities and counties not to be preempted by state law from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses. The second provision provides that it is the Legislature's intent that municipalities and counties are not preempted by state law from establishing higher penalties than those provided by state law and mandatory penalties when state law provides discretionary penalties. Higher and mandatory penalties include fines, community service, restitution, and forfeiture. With regard to fines, a fine may not exceed \$500, the maximum fine specified in s. 125.69, F.S., for violations of county ordinances, and s. 162.21, F.S., for violations of municipal and county ordinances. Upon a finding that a juvenile has violated a graffiti-related ordinance, no court acting under chapter 39, F.S., may provide a disposition of the case that is less severe than any mandatory penalties prescribed by municipal or county ordinance for such violation.

Section 901.15(7), F.S., is amended to authorize a law enforcement officer to make an arrest without a warrant when the officer has probable cause to believe that a person has committed an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.

Section 3 provides an effective date of October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private sector impact is limited to those persons subject to fines and forfeitures for violating county or municipal ordinances.

C. Government Sector Impact:

Counties and municipalities will be permitted to impose higher penalties for graffiti or graffiti-related offenses than those provided by state law, and mandatory penalties where state law provides for discretionary penalties.

The extent to which local governments are positively fiscally impacted cannot be ascertained since the impact depends on the type of penalties, including mandatory penalties, the county or municipality establishes for graffiti or graffiti-related offenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.