

By Senator Gutman

34-255-98

1 A bill to be entitled
2 An act relating to criminal mischief; amending
3 s. 806.13, F.S., relating to criminal mischief
4 offenses and penalties; providing for
5 reclassification of a misdemeanor violation of
6 the section involving less than a specified
7 amount in property damage when the offender has
8 one or more prior convictions under the
9 section; providing legislative intent;
10 providing that a county or municipality is not
11 preempted by state law from establishing an
12 ordinance that prohibits the marking of
13 graffiti or other graffiti-related offenses and
14 penalizes such offenses with higher penalties
15 than those provided by state law or with
16 mandatory penalties; providing that the court
17 may not provide a disposition of the case which
18 is less severe than such higher or mandatory
19 penalties in certain juvenile proceedings for
20 violation of the ordinance; amending s. 901.15,
21 F.S., relating to circumstances for arrest
22 without a warrant; providing for such arrest
23 when there is probable cause to believe that
24 the person has committed criminal mischief or a
25 graffiti-related offense; providing an
26 effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (1) of section 806.13, Florida
2 Statutes, is amended, and subsection (7) is added to that
3 section, to read:

4 806.13 Criminal mischief; penalties; penalty for
5 minor.--

6 (1)(a) A person commits the offense of criminal
7 mischief if he or she willfully and maliciously injures or
8 damages by any means any real or personal property belonging
9 to another, including, but not limited to, the placement of
10 graffiti thereon or other acts of vandalism thereto.

11 (b)1. If the damage to such property is \$200 or less,
12 it is a misdemeanor of the second degree, punishable as
13 provided in s. 775.082 or s. 775.083.

14 2. If the damage to such property is greater than \$200
15 but less than \$1,000, it is a misdemeanor of the first degree,
16 punishable as provided in s. 775.082 or s. 775.083.

17 3. If the damage is \$1,000 or greater, or if there is
18 interruption or impairment of a business operation or public
19 communication, transportation, supply of water, gas or power,
20 or other public service which costs \$1,000 or more in labor
21 and supplies to restore, it is a felony of the third degree,
22 punishable as provided in s. 775.082, s. 775.083, or s.
23 775.084.

24 4. If the person has one or more previous convictions
25 for violating this subsection, the offense under subparagraph
26 1. or subparagraph 2. for which the person is charged shall be
27 reclassified as a felony of the third degree, punishable as
28 provided in s. 775.082, s. 775.083, or s. 775.084.

29 (7) Because of the difficulty of confronting the
30 blight of graffiti, it is the intent of the Legislature that
31 municipalities and counties not be preempted by state law from

1 establishing ordinances that prohibit the marking of graffiti
2 or other graffiti-related offenses. Furthermore, as related
3 to graffiti, such municipalities and counties are not
4 preempted by state law from establishing higher penalties than
5 those provided by state law and mandatory penalties when state
6 law provides discretionary penalties. Such higher and
7 mandatory penalties include fines that do not exceed the
8 amount specified in ss. 125.69 and 162.21, community service,
9 restitution, and forfeiture. Upon a finding that a juvenile
10 has violated a graffiti-related ordinance, a court acting
11 under chapter 39 may not provide a disposition of the case
12 which is less severe than any mandatory penalty prescribed by
13 municipal or county ordinance for such violation.

14 Section 2. Subsection (7) of section 901.15, Florida
15 Statutes, is amended to read:

16 901.15 When arrest by officer without warrant is
17 lawful.--A law enforcement officer may arrest a person without
18 a warrant when:

19 (7) There is probable cause to believe that the person
20 has committed:

21 (a) An act of domestic violence, as defined in s.
22 741.28.⁺

23 (b) Child abuse, as defined in s. 827.04(2) and (3).⁺
24 ~~or~~

25 (c) Any battery upon another person, as defined in s.
26 784.03.

27 (d) An act of criminal mischief or a graffiti-related
28 offense as described in s. 806.13.

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30 With respect to an arrest for an act of domestic violence, the
31 decision to arrest shall not require consent of the victim or

1 consideration of the relationship of the parties. It is the
2 public policy of this state to strongly discourage arrest and
3 charges of both parties for domestic violence on each other
4 and to encourage training of law enforcement and prosecutors
5 in this area. A law enforcement officer who acts in good faith
6 and exercises due care in making an arrest under this
7 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a
8 foreign order of protection accorded full faith and credit
9 pursuant to s. 741.315, is immune from civil liability that
10 otherwise might result by reason of his or her action.

11 Section 3. This act shall take effect October 1, 1998.

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SENATE SUMMARY

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Provides that the offense of criminal mischief is a third-degree felony rather than a misdemeanor offense if the offender has one or more prior convictions for committing criminal mischief. Provides that a county or municipality may enact by ordinance penalties for graffiti-related offenses which exceed the penalties provided under state law. Requires that a court impose the penalty provided under a county or municipal ordinance for a graffiti-related offense under certain circumstances.