

**STORAGE NAME:** h1157s1z.cpcs.doc

**DATE:** June 14, 2002

**\*\*AS PASSED BY THE LEGISLATURE\*\***

**CHAPTER #:** 2002-163, Laws of Florida

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
FINAL ANALYSIS**

**BILL #:** CS/HB 1157, 1ST ENG.

**RELATING TO:** Criminal Mischief

**SPONSOR(S):** Council for Healthy Communities & Representative Diaz-Balart

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 6 NAYS 0
  - (2) HEALTHY COMMUNITIES YEAS 16 NAYS 0
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This council substitute requires a person who commits a graffiti-related criminal mischief offense to pay, in addition to any other penalty, a fine of at least \$250 for a first offense, \$500 for a second offense, and \$1,000 for a third or subsequent offense. The parent or legal guardian of a minor is liable for payment of the fine. The person is required to perform at least 40 hours of community service and, if possible, to perform 100 hours of community service that involves the removal of graffiti.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |  |   |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a "no" above, please explain:

This bill enhances criminal mischief penalties related to graffiti.

This bill mandates minimum fines to be imposed for criminal mischief crimes by minors and holds the guardian or parents of a minor financially responsible.

B. PRESENT SITUATION:

Pursuant to § 806.13(1)(a), a person commits the act of criminal mischief if the state can prove three elements.<sup>1</sup> First, the state must prove that the person injured or damaged property.<sup>2</sup> Graffiti and other acts of vandalism are among the means by which property can be injured or damaged. Second, the state must prove that the injured or damaged property belonged to another.<sup>3</sup> Finally, the state must prove that the injury or damage was done willfully and maliciously.<sup>4</sup> "Willfully" means intentionally, knowingly, and purposely.<sup>5</sup> "Maliciously" means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.<sup>6</sup>

The punishment provided by § 806.13(b) varies depending upon the value of the property damaged.

- If the property damage is \$200 or less, criminal mischief is a second degree misdemeanor punishable by up to 60 days imprisonment<sup>7</sup> or a fine of up to \$500<sup>8</sup>. If the person has one or more previous convictions under this provision, the offense for which the person is charged shall be reclassified as a third degree felony.
- If the property damage is greater than \$200, but less than \$1,000, criminal mischief is a first degree misdemeanor punishable by up to one year in jail or a fine of up to \$1,000. If the person has one or more previous convictions for criminal mischief, the offense for which the person is charged is reclassified as a third degree felony.

<sup>1</sup> Fla. R. Crim. P., Fla. Standard Jury Instructions In Criminal Cases: Arson and Criminal Mischief, 1249 (2001).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> § 775.082(4), F.S.

<sup>8</sup> § 775.083(1), F.S.

- Criminal mischief is a third degree felony if the damage to property is \$1,000 or greater. It is also a third degree felony 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 which costs \$1,000 or more in labor and supplies to restore. A third degree felony is punishable by up to five years in prison<sup>9</sup> and a fine of up to \$5,000<sup>10</sup>.

Section 806.13 also establishes penalties for criminal mischief in which specified property is damaged such as a public telephone, a sexual violent predator facility or a place of worship.

Pursuant to § 806.13(5)(a), property damaged during one scheme or course of conduct, when owned by separate persons, may be aggregated to determine the grade of the offense under this section. A person may also be required to pay for the property damage in addition to any other criminal penalty imposed.

If a minor is eligible for a driver's license and is found to have committed a delinquent act under this subsection for placing graffiti on any public or private property, the minor's license or privilege shall be revoked or withheld for up to one year in addition to any other penalty provided by law. If the minor's driver's license or driving privilege has already been suspended or revoked for any reason, the period of suspension or revocation shall be extended by an additional period not to exceed one year. If the minor is under the eligible age for a driver's license or driving privileges, the minor's driver's license or driving privileges will be withheld for up to one year after the date on which the minor would otherwise become eligible.

A minor whose driver's license has been revoked, suspended, or withheld under this provision may elect to reduce that period by performing community service at a rate of one day for each hour of community service performed. If the court determines that the minor's driver's license or driving privilege is necessary due to family hardship, the court will order the minor to perform community service and reduce the period of revocation, suspension, or withholding at a rate of 1 day for each hour of community service performed. The term "community service" is defined as cleaning graffiti from public property.

Referencing the difficulty in confronting the blight of graffiti, § 806.13(8) expresses the intent of the Legislature by providing that municipalities and counties are not preempted from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses. Municipalities and counties are not preempted from establishing higher penalties when state law provides discretionary penalties. However, the higher mandatory penalties, including fines, may not exceed the amount specified in §§ 125.69 and 162.21 relating to the penalties for violations of county and municipality ordinances.

#### C. EFFECT OF PROPOSED CHANGES:

CS/HB 1157 requires a person who commits a graffiti-related criminal mischief offense to pay, in addition to any other penalty, a fine of at least \$250 for a first offense, \$500 for a second offense, and \$1,000 for a third or subsequent offense. A parent or legal guardian is held liable along with a minor who commits a delinquent act under the section. A court is not required to impose the mandatory fine if the court finds that the parent, legal guardian, or person is indigent and does not have the ability to pay the fine of the judge finds that the person does not have the ability to pay the fine whether or not the person is indigent.

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<sup>9</sup> § 775.082(3)(d)

<sup>10</sup> § 775.083(1)(c)

Further, a person who commits a graffiti related criminal mischief act is required to perform at least 40 hours of community service and, if possible to perform at least 100 hours of community service that involves the removal of graffiti.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The bill requires the imposition of mandatory fines for cases in which the offense of criminal mischief relates to graffiti.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

*Committee Amendments:*

A strike-everything amendment was adopted by the Committee on Crime Prevention, Corrections & Safety on February 21, 2002. As amended, the bill retains language in the statute authorizes municipalities and counties to establish penalties more severe for graffiti-related offenses than the penalties provided by state law. Further, the mandatory fine for a first, second, third, or subsequent offense is moved to another subsection of § 806.13 and clarifies that the fine must be imposed in addition to any other penalty provided by law.

The bill with the traveling strike-everything amendment was made a council substitute by the Council for Healthy Communities at its meeting on February 26, 2002.

*Floor Amendments:*

On third reading, the House adopted an amendment sponsored by Rep. Richardson that allows a judge to decline to order the payment of the fine for graffiti-related criminal mischief if the court finds that the person "does not have the ability to pay the fine whether or not the person is indigent."

SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Chasity H. Frey

Trina Kramer

AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

David De la Paz

Chasity H. Frey

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**PAGE:** 6

**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:**

Prepared by:

Staff Director:

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Trina Kramer

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