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DATE: February 26, 2002

**HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS**

BILL #: CS/HB 1157

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 committee substitute requires a person who commits a placement of graffiti related criminal mischief offense to pay, in addition to any other penalty, \$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 a fine. A provision of the bill permits the court to decline to impose a fine if the court finds that the person subject to paying the fine is indigent. The person is required to perform at least 40 hours of community service and 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 when people are convicted of criminal mischief.

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.¹ First, that the person injured or damaged property.² Graffiti and other acts of vandalism are among the means by which property can be injured or damaged. Second, that the injured or damaged property belonged to another.³ Finally, that the injury or damage was done willfully and maliciously.⁴ "Willfully" means intentionally, knowingly, and purposely.⁵ "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.⁶

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 under § 775.082(4)(b) or a fine of up to \$500 under § 775.083(1)(e). 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.
- Property damage that is greater than \$200, but less than \$1,000, is a first degree misdemeanor punishable by up to one year in jail under § 775.082(4)(a) or a fine of up to \$1,000 under § 775.083(1)(d). 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.

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

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

- 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 under § 775.082(3)(d) and a fine of up to \$5,000 under § 775.083(1)(c).

Pursuant to § 806.13(2), any person who willfully and maliciously defaces, injures, or damages by any means a church, synagogue, mosque, or other place of worship, or any religious article within the place of worship is guilty of a third degree felony if the damage to the property is greater than \$200.

Any person who willfully destroys or substantially damages, without the owner's consent, a public telephone, telephone cables, wires, fixtures, antennas, amplifiers, or any other apparatus, equipment, or appliances, that results in an inoperative public telephone or that opens the body of a public telephone is guilty of a third degree felony.

Any person who willfully and maliciously defaces, injures, or damages a sexually violent predator detention or commitment facility as defined in part V of chapter 394, or any property within the detention or commitment facility is guilty of a third degree felony if the damage to the property is greater than \$200.

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 or driving privileges, 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 or driving privileges 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, e.g. employment or medical purposes of the minor or a member of the minor's family, 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:

This council substitute requires a person who commits a placement of graffiti related criminal mischief offense to pay, in addition to any other penalty, \$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.

Further, a person who commits a graffiti related criminal mischief act is required to perform at least 40 hours of community service and 100 hours of community service that involves the removal of graffiti. The committee substitute retains current language in the statute that authorizes municipalities and counties to establish penalties more severe for graffiti-related offenses than the penalties provided by state law. There are also a few other minor technical changes that improve the clarity of the statutory language but that do not broaden or reduce the scope of the council substitute.

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 reduce the authority that counties or municipalities have to raise revenues in the aggregate. However, this bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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:

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 committee substitute by the Council for Healthy Communities at its meeting on February 26, 2002.

SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Chasity H. Frey

Trina Kramer

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AS REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Chasity H. Frey

David De la Paz