

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 Criminal Justice

BILL: SB 994

INTRODUCER: Senator Calatayud and others

SUBJECT: Public Nuisances

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 994 makes several changes relating to public nuisances, especially regarding certain acts that evidence religious or ethnic intimidation, threat, or intent to harm, by:

- Providing that it is a first degree misdemeanor to distribute pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public place, including outside a private residence, when such distribution leads to littering. If the materials distributed evidences religious or ethnic intimidation, threat, or intent to harm, the violation is reclassified to a third degree felony and is considered a hate crime for the purpose of hate-crimes reporting.
- Providing that it is aggravated stalking, a third degree felony, to willfully follow, harass, or interfere with another person’s quiet enjoyment based on the person’s wearing of religious-based garments or garments commonly associated with a particular religious or ethnic group or any other indicia of any religious or ethnic heritage. A violation is considered a hate crime for the purpose of hate-crimes reporting.
- Removing the \$200 property damage threshold that currently applies to third degree felony criminal mischief involving a church, synagogue, mosque, or other place of worship, or any religious article contained therein.
- Providing that it is third degree felony criminal mischief and a hate crime for the purpose of hate-crime reporting to willfully and maliciously deface, injure, or damage:
 - Any religious cemetery, gravesite, or grave marker, including but not limited to any Holocaust memorial, statute, or museum with any indication of religious or ethnic heritage;
 - Any school or community center with indicia of religious or ethnic heritage; or
 - Any public or private property in a manner that evidences religious or ethnic intimidation, threat, or intent to harm.
- Providing that it is a first degree misdemeanor to project an image outdoors onto a publicly or privately owned building or other property, without written consent of the owner of the building or other property. If the image projected evidences religious or ethnic intimidation,

threat, or intent to harm, the violation is punishable as a third degree felony and is considered a hate crime for the purpose of hate-crimes reporting.

- Amending s. 871.01(1), F.S., which provides that it is a second degree misdemeanor to willfully interrupt or disturb any school or assembly of people who meet for worship or other lawful purpose, to include a meeting for the purpose of acknowledging the death of an individual.
- Reclassifying a violation of s. 871.01(1), F.S., as a third degree felony, and providing the violation is a hate crime for the purpose of hate-crime reporting if the violator evidences religious or ethnic intimidation, threat, or intent to harm during the commission of the offense.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2023.

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-Crimes 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 intimidation, threat, or intent to harm, by

- Amending s. 403.413, F.S., the Florida Litter Law, to provide that it is a first degree misdemeanor to distribute pamphlets, flyers, or other materials, whether for commercial or noncommercial purposes, in a public place, including outside a private residence, when such distribution leads to littering. If the materials distributed evidence religious or ethnic intimidation, threat, or intent to harm, the violation is reclassified to a third degree felony and is considered a hate crime for the purpose of hate-crimes reporting.
- Amending s. 784.048, F.S., to provide that it is aggravated stalking, a third degree felony, to willfully follow, harass, or interfere with another person's quiet enjoyment based on the person's wearing of religious-based garments or garments commonly associated with a particular religious or ethnic group or any other indicia of any religious or ethnic heritage. A violation is considered a hate crime for the purpose of hate-crimes reporting.
- Amending s. 806.13, F.S., to remove the \$200 property damage threshold that currently applies to third degree felony criminal mischief involving a church, synagogue, mosque, or other place of worship, or any religious article contained therein.
- Amending s. 806.13, F.S., to provide that it is third degree felony criminal mischief and a hate crime for the purpose of hate-crimes reporting to willfully and maliciously deface:
 - Any religious cemetery, gravesite, or grave marker, including but not limited to, any Holocaust memorial, statute, or museum with any indication of religious or ethnic heritage;
 - Any school or community center with indicia of religious or ethnic heritage; or
 - Any public or private property in a manner that evidences religious or ethnic intimidation, threat, or intent to harm.
- Amending s. 806.13, F.S., to provide that it is a first degree misdemeanor to project an image outdoors onto a publicly or privately owned building or other property, without written consent of the owner of the building or other property. If the image projected evidences religious or ethnic intimidation, threat, or intent to harm, the violation is punishable as a third degree felony and is considered a hate crime for the purpose of hate-crimes reporting.
- Amending s. 871.01(1), F.S., to provide that it is a second degree misdemeanor to willfully interrupt or disturb any school or assembly of people met for worship or other lawful purpose, to include a meeting for the purpose of acknowledging the death of an individual. This violation includes any physical manifestations of anti-Semitism directed toward a Jewish or non-Jewish individual or his or her property or toward Jewish community institutions or religious facilities, Jewish cemeteries, or Jewish gravesites. Such expression includes the use of a Nazi symbol, such as a swastika.
- Amending s. 871.01(1), F.S., to reclassify a violation of s. 871.01(1), F.S., as a third degree felony and provide that the violation is a hate crime for the purpose of hate-crimes reporting if the violator evidences religious or ethnic intimidation, threat, or intent to harm during the commission of the offense.

The bill takes effect October 1, 2023.

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:

Provisions contained in the bill relating to littering may be subject to legal challenges. The Supreme Court of the United States has held that “the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.”¹⁴

The Court has also upheld individuals’ right to picket at a funeral. The court has recognized that “[e]ven protected speech is not equally permissible in all places and at all times.” A person’s “choice of where and when to conduct its picketing is not beyond the Government’s regulatory reach-it is ‘subject to reasonable time, place, or manner restrictions’ that are consistent with the standards announced in this Court’s precedents.”¹⁵

Additional challenges may be faced under the Court’s holding that an ordinance that criminalized placing “... a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender..” was facially unconstitutional.¹⁶

¹⁴ *Schneider v. State of New Jersey*, 308 U.S. 147, 162 (1939).

¹⁵ *Snyder v. Phelps*, 562 U.S. 4423, 456 (2011) (citations omitted).

¹⁶ *R.A.V. v. City of Saint Paul*, 505 U.S. 377 (1992.)

Additionally, a question may be raised about whether several of the bias-evidencing crimes created by the bill implicate the First Amendment. The Florida Supreme Court’s opinion in *State v. Stadler*¹⁷ provides 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,¹⁸ 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.”¹⁹ The court further explained that a bias-evidencing crime “has been viewed as embracing two broad classes of offenses.”²⁰ 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.”²¹ 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.”²² 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.”²³ 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.”²⁴ Bias-evidencing crimes in this class violate the First Amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁷ 630 So.2d 1072 (Fla. 1974).

¹⁸ 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.

¹⁹ *Stadler, supra*, at 1076, quoting s. 775.085, F.S.

²⁰ *Stadler, supra*, at 1076 (citations omitted).

²¹ *Stadler, supra*, at 1076.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).²⁵ The EDR 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.

²⁵ *SB 994 – Public Nuisances*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

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.²⁶

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.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²⁶ *Id.*