

CHAPTER 98-93

Senate Bill No. 444

An act relating to criminal mischief; amending s. 806.13, F.S., relating to criminal mischief offenses and penalties; providing for reclassification of a misdemeanor violation of the section involving less than a specified amount in property damage when the offender has one or more prior convictions under the section; providing legislative intent; providing that a county or municipality is not preempted by state law from establishing an ordinance that prohibits the marking of graffiti or other graffiti-related offenses and penalizes such offenses with higher penalties than those provided by state law or with mandatory penalties; providing that the court may not provide a disposition of the case which is less severe than such higher or mandatory penalties in certain juvenile proceedings for violation of the ordinance; amending s. 901.15, F.S., relating to circumstances for arrest without a warrant; providing for such arrest when there is probable cause to believe that the person has committed criminal mischief or a graffiti-related offense; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 806.13, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

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

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

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

3. If the damage is \$1,000 or greater, or if 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, it is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(7) Because of the difficulty of confronting the blight of graffiti, it is the intent of the Legislature that municipalities and counties not be preempted by state law from establishing ordinances that prohibit the marking of graffiti or other graffiti-related offenses. Furthermore, as related to graffiti, such 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. Such higher and mandatory penalties include fines that do not exceed the amount specified in ss. 125.69 and 162.21, community service, restitution, and forfeiture. Upon a finding that a juvenile has violated a graffiti-related ordinance, a court acting under chapter 985 may not provide a disposition of the case which is less severe than any mandatory penalty prescribed by municipal or county ordinance for such violation.

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

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

- (7) There is probable cause to believe that the person has committed:
 - (a) An act of domestic violence, as defined in s. 741.28;
 - (b) Child abuse, as defined in s. 827.04(2) and (3); ~~or~~
 - (c) Any battery upon another person, as defined in s. 784.03.

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

With respect to an arrest for an act of domestic violence, the decision to arrest shall not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence on each other and to encourage training of law enforcement and prosecutors in this area. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under s. 741.31(4) or s. 784.047, or pursuant to a foreign order of protection accorded full faith and credit pursuant to s. 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

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

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.