

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1450

SPONSOR: Senator Villalobos

SUBJECT: Criminal Mischief/Minimum Penalties

DATE: March 27, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill amends s. 806.13(7), F.S., to provide for the imposition of minimum fines and community service requirements in sentencing offenders who violate the criminal mischief statute. The bill also provides that the parent or legal guardian of a minor who commits a delinquent act in violation of s. 806.13, F.S., may be held liable for the payment of the fine imposed by the sentencing court unless the court finds the parent or guardian is indigent and unable to pay.

The bill deletes the language in s. 806.13(7), F.S., which provides that a county or municipality may establish higher penalties and mandatory penalties when the criminal mischief offense is graffiti-related.

This bill substantially amends section 806.13, F.S.

**II. Present Situation:**

***Criminal Mischief.***

Under the provisions of s. 806.13, F.S., a person commits criminal mischief if he or she willfully and maliciously injures or damages by any means real or personal property belonging to another. This specifically includes acts of vandalism or the placement of graffiti on the property of another.

The statute sets forth differing degrees of crimes, based upon the monetary damage done to the property of another, as follows:

- if the damage is \$200 or less, it is a second degree misdemeanor.
- if the damage is greater than \$200 but less than \$1,000, it is a first degree misdemeanor.
- if the damage is \$1,000 or greater, or if there is interruption of 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, the offense is classified as a third degree felony. If the offense involves damage to a religious facility or article, and the property damage amounts to \$200 or greater, it is a felony of the third degree. The same is true if the damage involves a public telephone and related equipment.
- If the person has one or more previous convictions, a subsequent misdemeanor violation can be reclassified as a third degree felony.

The amounts of value of damage to property owned by separate persons may be aggregated in determining the degree of the criminal mischief offense, if the property was damaged during one scheme or course of conduct. In addition to any other criminal penalty, the offender may be required to pay for the damages caused by the offense.

#### ***Criminal Penalties.***

A person may be imprisoned for up to 5 years and fined up to \$5,000 for the commission of a third degree felony. For the commission of a first degree misdemeanor, the maximum penalties are up to 1 year imprisonment and a fine not exceeding \$1,000. A second degree misdemeanor carries the potential penalties of up to 60 days incarceration and a fine not greater than \$500. ss. 775.082, 775.083, F.S.

#### ***Special Penalties for Minors in Criminal Mischief Statute.***

If a minor is found to have committed a delinquent act under s. 806.13, F.S., which involves placing graffiti on any public or private property, his or her driving privilege may be effected as follows:

- if the minor is eligible for a driver's license, the court shall direct the Department of Highway Safety and Motor Vehicles (DHSMV) to revoke or withhold the privilege for not more than 1 year;
- if the minor's driving privilege is under suspension or revocation for any reason, the court shall direct the DHSMV to extend the period of suspension or revocation for not more than 1 year;
- if the minor is ineligible for a license, by reason of age, the court shall direct the DHSMV to withhold the privilege for not more than 1 year after the date upon which he or she would become eligible.

The period of revocation, suspension, or withholding of the minor's driving privilege may be reduced by one day for each hour of community service performed by the minor. Additionally, if the court finds that it is a family hardship for the minor's driving privilege to be effected, in terms of necessary employment of the minor or the need for medically-related transportation, the court shall order the minor to perform community service at the rate mentioned above.

“Community service,” for purposes of this particular provision of the statute, means cleaning graffiti from public property. s. 806.13(5), (6), F.S.

In 1998, the Legislature added subsection (7) providing that municipalities and counties not be preempted by state law from establishing ordinances that prohibit graffiti-related offenses with higher penalties or mandatory penalties. The statute states: “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.” s. 806.13(7), F.S.

### ***Juvenile Sanctions in Delinquency Cases.***

Generally when a child is prosecuted for committing a law violation in the Juvenile Court, the court has several disposition alternatives. Under s. 985.231, F.S., the court may withhold adjudication or adjudicate the child a delinquent child. The child, depending upon his or her delinquency history, may then be placed in a probation program, a postcommitment probation program, or be committed to the Department of Juvenile Justice for placement in a residential program or facility of varying security levels.

Section 985.231(1)(a)1., F.S., states: “A probation program for an *adjudicated* delinquent child must include a penalty component such as *restitution* in money or in kind, *community service*, a *curfew*, revocation or suspension of the *driver’s license* of the child, or *other nonresidential punishment* appropriate to the offense...(emphasis added).”

The child may be ordered to pay restitution, as noted above, for damages that bear a significant relationship to the convicted offense. *D.M. v. State*, 755 So.2d 752 (4<sup>th</sup> DCA 2000), quoting *J.M. v. State*, 661 So.2d 1285 (4<sup>th</sup> DCA 1995). The court should make a finding with regard to what the child may reasonably be expected to earn upon finding suitable employment, which may be a condition of probation. *see A.J. v. State*, 677 So.2d 935 (4<sup>th</sup> DCA 1996); *C.D.D. v. State*, 684 So.2d 866 (2<sup>nd</sup> DCA 1996); *D.G. v. State*, 516 So.2d 15 (3<sup>rd</sup> DCA 1987).

There is no direct statutory authorization for the court to *impose a fine* in a juvenile case, in fact, *court fees are specifically prohibited*. Section 985.221, F.S., states in part: “In any proceeding under this chapter, court fees shall not be charged against, nor witness fees allowed to, any party to a delinquency petition or any parent or legal guardian or custodian or child named in a summons.” The only statutory exception is found in s. 938.03, F.S., which authorizes the court to assess a \$50 fee in delinquency proceedings, of which \$49 is deposited in the Crimes Compensation Trust Fund (\$1 is a service charge retained by the clerk of court). *see J.A. v. State*, 633 So.2d 108 (2<sup>nd</sup> DCA 1994).

### ***Parental Responsibility in Delinquency Cases.***

The circuit court has exclusive original jurisdiction of proceedings in which a child has been alleged to have committed a delinquent act or law violation. s. 985.201(1), F.S.

The parent, legal custodian, actual custodian, or guardian of a child alleged to have committed a delinquent act must be served with a summons. The summons requires the custodian of the child

to produce the child at the said time and place (before the court). If the parent, custodian, or guardian fails to obey a summons, the court may order that individual to be taken into custody immediately to show cause why he or she should not be held in contempt of court for failing to obey the summons. The jurisdiction of the court shall attach to *the child and the case* when the summons is served or when the child is taken into custody. s. 985.219, F.S.

A child is entitled to representation by legal counsel at all stages of any proceedings under ch. 985, F.S. If the child and parents or guardian are indigent, counsel will be appointed pursuant to s. 27.52, F.S., which states that the parents or legal guardian shall be liable for the costs associated with representation.

If the parents or legal guardian of an indigent child are not indigent but refuse to employ counsel, the court shall appoint counsel to represent the child until counsel is provided. If the non-indigent parent or guardian willfully fails to follow the court order the court may hold the parent or guardian in civil contempt. s. 985.203(2), F.S.

With regard to restitution, s. 775.089(5), F.S., states: “An order of restitution *may be enforced* by the state, or by a victim named in the order to receive the restitution, *in the same manner as a judgment in a civil action.*” A child may be ordered, in a delinquency case disposition, to make monetary restitution, *through a promissory note cosigned by the child’s parent or guardian.* If the court finds that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts, the parent or guardian may be absolved of liability for the restitution. s. 985.231(1)(a)6., F.S.; *B.M. v. State*, 744 So.2d 505 (5<sup>th</sup> DCA 1999).

The court may retain jurisdiction over a child *and the child’s parent or legal guardian whom the court has ordered to pay restitution* until the restitution order is satisfied or until the court orders otherwise. s. 985.201(4)(c), F.S.

The court may order the parent or legal guardian of a delinquent child to attend a course in parenting skills, to accept counseling, or to receive other available assistance. s. 985.204, F.S.; s. 985.231(1)(e), F.S.

The parent or guardian of the child may be ordered by the court to render community service in a public service program, participate in a community work project, or do community service. ss. 985.231(1)(a)5., 7., and 9.

### ***Civil Liability.***

Under s. 741.24, F.S., any governmental entity, business entity, religious organization or person may recover damages in an action at law from the parents of a minor child, living with the parents, who maliciously or willfully destroys the property of the entity, organization or person. The statutory maximum recovery of \$2,500 was deleted by the Legislature in 1988, therefore there is currently no statutory limit. *see also Stang v. Waller*, 415 So.2d 123 (Fla. 1982).

### **III. Effect of Proposed Changes:**

The bill deletes the language in s. 806.13(7), F.S., which provides that a county or municipality may establish higher penalties and mandatory penalties when a criminal mischief offense is graffiti-related.

The bill imposes mandatory fines upon adults who violate s. 806.13, F.S., and minors who commit delinquent acts of criminal mischief in the following amounts:

- \$250 if it is a first offense;
- \$500 for a second offense; and
- \$1,000 for any subsequent offense.

The bill further requires that the offenders perform at least 40 hours of community service, and, if possible, at least 100 hours of community service involving the removal of graffiti.

The provisions of the bill would hold the parent or legal guardian of a child who commits a delinquent act of criminal mischief liable, along with the child, for payment of the fine. If the court finds the offender, the parent, or the guardian is indigent and lacks the ability to pay the mandatory fines set forth above, the court may waive imposition of the fine.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None noted.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

As explained in the “Present Situation” section of the Bill Analysis, in delinquency cases a child may be ordered to pay restitution, do community service, abide by a curfew, have his or her driver’s license suspended or revoked, *or such other nonresidential punishment as is appropriate to the offense*, but no court costs may be imposed, *except* for the \$50 cost for the Crimes Compensation Trust Fund. It is unclear whether the imposition of a fine would be considered by the courts to constitute “other nonresidential punishment” under s. 985.231(1)(a)1., F.S.

Under the delinquency statutes, it is also common practice that the parent may be absolved from liability for restitution if the parent shows a diligent and good faith effort to prevent the child from engaging in delinquent acts. s. 985.231(1)(a)6., F.S.; *B.M. v. State*, 744 So.2d 505 (5<sup>th</sup> DCA 1999). In all likelihood the provision of the bill that would hold the parent or guardian liable for a fine imposed upon a delinquent child would be read *in pari materia* with s. 985.231(1)(a)6., F.S.

**VIII. Amendments:**

None.