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LEGAL ADVISORY

DATE: September 12, 2023

TO: All Special Agents in Charge and Capitol Police Supervisors

THROUGH: J. Mark Glass, Commissioner

FROM: James D. Martin, General Counsel 

SUBJECT: Public Nuisances, Harassment or Intimidation based on Religious or Ethnic Heritage, Trespass for the Purpose of Threatening or Intimidating

This legal advisory pertains to public nuisances, harassment or intimidation based on religious or ethnic heritage, and trespass for the purpose of threatening or intimidating.

In 2023, the Florida Legislature passed House Bill 269 now codified as Chapter Law 2023-24. This law created section 784.0493, Florida Statutes, that prohibits a person from willfully and maliciously harassing or intimidating another person based on the person's wearing or displaying of any indicia relating to any religious or ethnic heritage.

The law also created section 810.098, Florida Statutes, that provides a new trespass offense if a person who is not authorized, licensed, or invited willfully enters the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person, and is warned by the state university or Florida College System institution to depart and refuses to do so.

Additionally, the law amends section 403.413, Florida Statutes, to prohibit a person from intentionally dumping litter onto private property for the purpose of intimidating or threatening the owner, resident, or invitee of such property.

The law also amended section 806.13(6), Florida Statutes, to create a new prohibition against knowingly and intentionally displaying or projecting, using any medium, an image onto a building, structure, or other property without the written consent of the owner of the building, structure, or property.

Finally, the law amended section 871.01, Florida Statutes, that prohibits a person from willfully and maliciously interrupting or disturbing any assembly of people met for the purpose of acknowledging the death of an individual.

These new and amended laws specifically pertain to public nuisances and law enforcement personnel of the department should be made aware of these provisions. A copy of Chapter Law 2023-24 and the Office of General Counsel's legal bulletin are attached for reference.

CHAPTER 2023-24

Committee Substitute for Committee Substitute for House Bill No. 269

An act relating to public nuisances; amending s. 403.413, F.S.; prohibiting a person from distributing onto private property any material for the purpose of intimidating or threatening the owner, resident, or invitee of such property; providing criminal penalties; prohibiting a person from distributing onto private property any material which contains a credible threat to the owner, resident, or invitee of such property; providing criminal penalties; providing a definition; creating s. 784.0493, F.S.; providing definitions; prohibiting a person from willfully and maliciously harassing, threatening, or intimidating another person based on the person's wearing or displaying of any indicia relating to any religious or ethnic heritage; providing criminal penalties; requiring that violations be reported as hate crimes; amending s. 806.13, F.S.; prohibiting the display or projection of images onto a building, structure, or property without permission; providing a definition; providing criminal penalties; providing construction; creating s. 810.098, F.S.; prohibiting a person who willfully enters the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person from remaining on such campus after being warned to depart; providing criminal penalties; providing construction; providing definitions; amending s. 871.01, F.S.; prohibiting interference with certain assemblies; providing a criminal penalty; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 403.413, Florida Statutes, is amended to read:

403.413 Florida Litter Law.—

(6) PENALTIES; ENFORCEMENT.—

(a)1. Except as provided in subparagraph 2., any person who dumps litter in violation of subsection (4) 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 shall be deposited into the Solid Waste Management Trust Fund to be used for the solid waste management grant program pursuant to s. 403.7095.

2.a. If a person violates subparagraph 1. by intentionally dumping litter onto private property for the purpose of intimidating or threatening the owner, resident, or invitee of such property, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

b. If a person violates subparagraph 1. by intentionally dumping litter onto private property for the purpose of intimidating the owner, resident, or invitee of such property and such litter contains a credible threat, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subparagraph, the term “credible threat” has the same meaning as in s. 784.048(1).

c. If the penalty for a violation of this subparagraph is reclassified under s. 775.085, such a violation is considered a hate crime for purposes of the reporting requirements of s. 877.19.

In addition, the court may require a person who violates this subsection ~~the violator~~ to pick up litter or perform other labor commensurate with the offense committed.

Section 2. Section 784.0493, Florida Statutes, is created to read:

784.0493 Harassment or intimidation based on religious or ethnic heritage.—

(1) As used in this section, the terms “credible threat” and “harass” have the same meaning as in s. 784.048(1).

(2) A person may not willfully and maliciously harass or intimidate another person based on the person’s wearing or displaying of any indicia relating to any religious or ethnic heritage.

(3) A person who violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A person who violates subsection (2), and in the course of committing the violation makes a credible threat to the person who is the subject of the harassment or intimidation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A violation of this section is considered a hate crime for purposes of the reporting requirements of s. 877.19.

Section 3. Subsections (6) through (10) of section 806.13, Florida Statutes, are renumbered as subsections (7) through (11), respectively, present subsection (9) of that section is amended, and a new subsection (6) is added to that section, to read:

806.13 Criminal mischief; penalties; penalty for minor.—

(6) A person may not knowingly and intentionally display or project, using any medium, an image onto a building, structure, or other property without the written consent of the owner of the building, structure, or property. For purposes of this subsection, the term “image” means a visual representation or likeness of a person or object, including text, graphics, logos, other artwork, or any combination thereof.

(a) A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates this subsection by displaying or projecting an image that contains a credible threat, as that term is defined in s. 784.048(1), commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the penalty for a violation of this subsection is reclassified under s. 775.085, such a violation is considered a hate crime for purposes of the reporting requirements of s. 877.19.

~~(10)(9)~~ A minor whose driver license or driving privilege is revoked, suspended, or withheld under subsection ~~(9)(8)~~ may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property.

Section 4. Section 810.098, Florida Statutes, is created to read:

810.098 Trespass for the purpose of threatening or intimidating another person.—

(1)(a) Whoever, without being authorized, licensed, or invited, willfully enters the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person, and is warned by the state university or Florida College System institution to depart and refuses to do so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the penalty for a violation of this subsection is reclassified under s. 775.085, such a violation is considered a hate crime for purposes of the reporting requirements of s. 877.19.

(2) As used in this section, the terms "Florida College System institution" and "state university" have the same meaning as in s. 1000.21(3) and (6), respectively.

Section 5. Subsection (1) of section 871.01, Florida Statutes, is amended to read:

871.01 Disturbing schools and religious and other assemblies.—

(1)(a) Whoever willfully and maliciously interrupts or disturbs any school or any assembly of people met for the worship of God, any assembly

of people met for the purpose of acknowledging the death of an individual, or for any other lawful purpose commits a misdemeanor of the first second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If a person commits a violation of paragraph (a) and in doing so makes a credible threat, as that term is defined in s. 784.048(1), he or she commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the penalty for a violation of this subsection is reclassified under s. 775.085, such a violation is considered a hate crime for purposes of the reporting requirements of s. 877.19.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor May 1, 2023.

Filed in Office Secretary of State May 1, 2023.

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

OFFICE OF GENERAL COUNSEL

LEGAL BULLETIN

House Bill 269, signed into law by Governor DeSantis in 2023, included changes to five different criminal offense statutes. Some of these changes added entirely new offenses or modified existing offenses.

A common theme throughout these offenses is that the conduct was done in a willful and malicious manner. Additionally, if there is a “credible threat” as defined in s. 784.048(1), F.S. then the offense can be enhanced to a third-degree felony. While a suspect may allege that some of the conduct is protected free speech, this law only criminalizes the conduct not the speech. If there are any questions of whether or not this is protected speech or conduct, the officer will need to seek advice from their Regional Legal Advisor or the Office of General Counsel.

“Willful” – Intentionally, knowingly and purposely. (FL Criminal Jury Instructions.)

“Maliciously” – means intentionally and without any lawful justification or excuse. With ill will, hatred, spite, or an evil intent.

“Credible threat” under 784.048(1)(c), F.S., 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. The present incarceration of the person making the threat is not a bar to prosecution under this section.

Section 784.0493, F.S. Harassment or intimidation based on religious or ethnic heritage.

This is an entirely new offense that was created from HB 269. A person may not willfully and maliciously harass or intimidate another person based on the person’s wearing or displaying of any indicia relating to any religious or ethnic heritage. This conduct would be a first-degree misdemeanor.

If the person makes a credible threat to the person being harassed or intimidated during the course of the conduct, the person commits a third-degree felony.

The first thing to look for in this offense is whether the suspect has willfully and maliciously harassed or intimidated another person. From there the analysis would move to was this harassment or intimidation based solely on the victim’s wearing or displaying any items that relate to religious or ethnic heritage. If both of those are found, then did the suspect make a credible threat to the victim in the course of the crime.

Harassment is defined in this situation as meaning to engage in a course of conduct directed at the victim, that:

1. Served no legitimate purpose;
2. Would cause substantial emotional distress to a reasonable person; **AND**
3. Did cause substantial emotional distress to the victim.

All three of those criteria must be found for there to be harassment of another individual for this offense.

Intimidate means that the defendant's behavior caused the victim to be reasonably in fear of harm.

Section 810.098 Trespass for the purpose of threatening or intimidating another person.

This method of committing the offense of Trespass is an entirely new offense. Whoever, without being authorized, licensed, or invited, willfully enters the campus of a state university or Florida College System institution for the purpose of threatening or intimidating another person, and is warned by the state university or Florida College System institution to depart and refuses to do so, commits a first-degree misdemeanor.

This offense cannot be enhanced to a felony offense.

There are warnings that must have been given and actions taken by the suspect before this conduct will rise to the level of this offense.

First, the suspect must have willfully entered the campus of a state university or Florida College System institution, as defined in either Section 1000.21(6) or 1000.21(3), F.S.

Second, the suspect entered the campus with the purpose of threatening or intimidating another person.

Third, the suspect was not authorized, licensed or invited to enter the campus.

Finally, the suspect was warned by the university or the college to depart from the campus and refused to do so.

Willfully defined as intentionally, knowingly and purposely.

To threaten or intimidate, defined as to put a reasonable person in fear of harm to his or her person or property. This is an objectively reasonableness standard, it isn't necessary that the specific person was in fear but would an objectively reasonable person feel in fear.

The officer must make certain that the person was warned and asked to leave the campus and the person refuses to leave. If the warning or request to leave did not occur, this offense cannot be charged.

Section 403.413, F.S. Florida Litter Law.

If an individual has intentionally dumped litter onto the private property of another with the sole purpose of *intimidating or threatening* the owner, resident or invitee of the property then the individual has committed a first degree misdemeanor.

If the intentional dumping was done in the same situation with the sole purpose of intimidating or threatening the owner, resident or invitee of the property and *the litter contains a credible threat*, then the individual has committed a felony of the third degree.

First, a law enforcement officer would be looking to see if this conduct was done in either an intimidating or threatening fashion, specifically aimed at the owner, resident or visitor of the property.

If that is met, then the officer would be looking to see if there was a “credible threat” contained within the litter itself. Whether that is through the items that make up the litter, or through a pattern created with the litter, it isn’t the conduct itself that is the credible threat in this situation. It is a threat passed along through the litter that has been dumped.

Section 806.13 Criminal Mischief

This is a new method of conduct to commit the offense of criminal mischief. A person may not knowingly and intentionally display or project, using any medium, an image onto a building, structure, or other property without the written consent of the owner of the building, structure, or property.

Image means a visual representation or likeness of a person or object, including text, graphics, logos, or other artwork, or any combination thereof.

The displaying or projecting is a first-degree misdemeanor. If the displaying or projecting of an image contains a credible threat, then the offense is a third-degree felony.

This offense will have the highest likelihood of invoking an individual’s first amendment right to free speech. It is not the imagery or words on the display or projection that is criminal. It is placing the display or projecting imagery onto a building, structure or other property without consent of the owner of that property.

First an officer would look to see if the suspect used any medium (or method) to knowingly and intentionally display or project an image onto the building, structure, or other property.

From there, the officer would determine if the display or projection was done without the **WRITTEN** consent of the owner of the property. It is extremely specific that there must be a written consent of the owner for imagery being displayed or projected on the owner’s property.

For the enhancement to a felony for this offense, there would need to be great care taken and done in consultation with the Regional Legal Advisor or General Counsel’s Office, as there must be a credible threat contained in the image displayed or projected onto the property. First amendment protections will have to be analyzed specific to each situation to determine whether or not there is sufficient evidence to enhance this conduct to a felony.

Section 871.01 Disturbing schools and religious and other assemblies.

There was an expansion of the protected assemblies within this statute as well as providing for enhancement to a felony offense for a credible threat.

If a person willfully and maliciously interrupts or disturbs any school or any assembly of people met for the worship of God, any assembly of people met for the purpose of acknowledging the death of an individual or for any other lawful purpose, the person commits a first-degree misdemeanor.

If there was a credible threat in the interruption or disruption, the offense could be enhanced to a third-degree felony.

The determination here is whether this is a school or an assembly of people meeting for a lawful purpose and did this suspect interrupt or disturb that school or lawful assembly willfully **AND** maliciously. (That lawful purpose would include but is not limited to worshipping God and acknowledging the death of a person.)

Willfully is defined here as knowingly, intentionally, and purposely.

Maliciously is defined here as intentionally and without any lawful justification or excuse or with ill will, hatred, spite or an evil intent.

This offense is another where the officer will want to be aware of potential first amendment issues.