

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/SB 1222

INTRODUCER: Criminal Justice Committee and Senator Trumbull and others

SUBJECT: Theft

DATE: February 12, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|------------|--------------------|
| 1. | <u>Vaughan</u> | <u>Stokes</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Atchley</u> | <u>Harkness</u> | <u>ACJ</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>FP</u> | _____ |

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 1222 amends s. 812.04, F.S., to specify the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from \$100 or more, but less than \$750, to \$40 or more, but less than \$750. This crime retains a level 2 in the offense severity ranking chart.

The bill creates new crimes relating to taking property from a person's home or porch. Specifically, if the property is taken from a dwelling or from the unenclosed curtilage of a dwelling, it is a:

- Third degree felony, if the property stolen is valued at \$750 or more. This crime is ranked as a level 4 in the offense severity ranking chart.
- Second degree felony, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof. This crime is ranked as a level 5 in the offense severity ranking chart.
- First degree misdemeanor, if the property stolen is valued at less than \$40.
 - A person who commits the above misdemeanor offense and who has previously been convicted of any theft commits a third degree felony. This crime is ranked as a level 2 in the offense severity ranking chart.
 - A person who commits the above misdemeanor offense and has previously been convicted two or more times of any theft commits a third degree felony. This crime is ranked as a level 4 in the offense severity ranking chart.

The bill amends s. 812.015, F.S., to provide that it is a third degree felony for a person to commit retail theft if the person acts in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense. This crime is listed as a level 5 in the offense severity ranking chart.

Commission of the offense described above is a second degree felony if the person solicits the participation of another person in the offense through the use of a social media platform. This crime is listed as a level 6 in the offense severity ranking chart.

The bill provides it is a first degree felony, if a person commits retail theft under s. 812.015(8) or (9), F.S., and:

- Has two or more previous convictions of violations of either or both of those subsections; or
- Possesses a firearm during the commission of such offense. This crime is listed as a level 8 in the offense severity ranking chart.

Additionally, the bill amends the aggregation criteria for specified retail theft offenses. For retail theft offenses under ss. 812.015(8), 812.015(9), and 812.015(10), F.S., where a specified number of retail thefts, specified value of property stolen, or specified number of items stolen, is aggregated to determine the total number of retail thefts or value of property stolen, the bill increases the aggregation period from 30 days to 45 days.

The bill may have a positive indeterminate prison bed impact. See Section V, Fiscal Impact Statement.

The bill provides an effective date of October 1, 2024.

II. Present Situation:

Retail merchants have experienced an increase in property theft referred to as “smash-and grab” theft. In this form of organized retail crime, a large group of offenders enter a retail store and steal thousands of dollars of products in minutes, typically overpowering the merchant's employees and preventing the merchant from stopping the theft. Law enforcement has reported such offenders utilizing social media to coordinate illegal group activity.

At the Nordstrom store in California, for example, thieves raided the store of over \$100,000 of merchandise in one minute and left the scene in 25 separate cars.¹ In December 2023, a smash and grab burglary at the Sawgrass Mills Mall in Sunrise, led to panic when suspects used an unknown device to break display glass generating a loud noise.²

¹ The San Francisco Chronical Business Insider, Jessica Chastain, *Smash-and-Grab Robberies Organized on Social Media, Police Say*, available at, <https://www.businessinsider.com/smash-and-grab-robberies-organized-on-social-media-police-2021-12> (last visited on January 20, 2024).

² 7 News, Miami, Brandon Beyer, Ruben Rosario and Robbin Simmons, *Police: Shattered glass during “smash and grab” at Sawgrass Mills Mall leads to panic*, available at, <https://wsvn.com/news/local/broward/police-shattered-glass-during-smash-and-grab-at-sawgrass-mills-mall-leads-to-panic/> (Last visited January 20, 2024).

Porch Pirating is a theft crime that has also increased in recent years. “Porch pirate”³ is a term that refers to a thief who takes packages left outside doors by couriers. As online shopping continues to be on the rise, so do incidences of porch piracy. Nearly eight in ten Americans have reported falling victim to such package theft in 2022, totaling an estimated 260 million packages worth \$19.5 billion.⁴

Theft

Section 812.014, F.S., provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.⁵

Generally, a person commits a third degree felony⁶ crime of grand theft if the property stolen is valued at \$750 or more, but less than \$20,000.⁷ If the property stolen is \$20,000 or more, but less than \$100,000, the offender commits a second degree felony,⁸ and if the property stolen is \$100,000 or more, the offender commits a first degree felony.⁹ Other items listed under this section such as the theft of a firearm, a motor vehicle, or a stop sign, may also constitute grand theft.¹⁰

Taking Property from a Dwelling or the Unenclosed Curtilage of a Dwelling

Section 812.014, F.S., defines theft offenses and categorizes the offense level based on the value of the property stolen and the offender’s prior history of theft convictions, the circumstances under which the theft occurs, or the type of property stolen to determine the level of offense.

Specifically, s. 812.014(2)(d), F.S., prohibits a person from stealing property valued at \$100 or more, but less than \$750, when property is taken from a dwelling or the unenclosed curtilage of a dwelling. A violation of the prohibition is a third degree felony and ranked as a Level 2 offense on the offense severity ranking chart of the Criminal Punishment Code.

A dwelling is defined as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has

³ Dictionary.com definition of porch pirate.

⁴ Forbes, Ana Durrani, *The Worst states for Porch Pirates 2024*, <https://www.forbes.com/home-improvement/home-security/worst-states-for-porch-pirates/#:~:text=Nearly%20eight%20in%2010%20Americans%20have%20had%20packages,million%20packages%20estimated%20at%20%2419.5%20billion%20in%202022> (last visited January 20, 2024).

⁵ Section 812.014(1), F.S.

⁶ 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.

⁷ Section 812.014(2)(c)1.-3., F.S.

⁸ Section 812.014(2)(b), F.S.

⁹ Section 812.014(2)(a)1., F.S.

¹⁰ Section 812.014(2)(c), F.S.

a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.¹¹

Unenclosed curtilage of a dwelling is defined as the unenclosed land or grounds, and any outbuildings that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.¹²

Retail Theft

Retail theft is the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.¹³

Under s. 812.015(8)(a)-(f), F.S., retail theft is a third degree felony, if a person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period to determine the value of the property stolen and such value is \$750 or more.
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the stolen property and such value is \$750 or more.
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense and such value is \$750 or more.
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purposed to be contained in the package or box and such value is \$750 or more.
- Individually, or in concert with 1 or more other persons, commits 5 or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of the merchandise, and two or more of the thefts occur at different physical locations.

Under s. 812.015(9)(a)-(c), F.S., retail theft is a second degree felony if a person:

- Commits a second or subsequent felony retail theft offense.
- Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000.

¹¹ Section s. 810.011(2), F.S.

¹² Section 810.09, F.S.

¹³ Section 812.015(1)(d), F.S.

- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.

Under s. 812.015(9)(d), F.S., retail theft is a second degree felony, regardless of the value of property stolen, if a person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

Criminal Punishment Code

The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁴

The Criminal Punishment Code¹⁵ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁶ Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any non-state prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁷ Absent mitigation,¹⁸ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁹

¹⁴ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense.

Section 775.083, F.S., provides the following maximum fines; \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

¹⁵ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁶ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁷ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁸ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁹ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Offense Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

III. Effect of Proposed Changes:

The bill amends s. 812.014(2), F.S., to specify the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from \$100 or more, but less than \$750, to \$40 or more, but less than \$750.

Additionally, the bill creates new offenses relating to theft from a dwelling or unenclosed curtilage of a dwelling, including:

- A third degree felony,²⁰ ranked as a Level 4 offense, if the property stolen is valued at \$750 or more.
- A second degree felony,²¹ ranked as a Level 5 offense, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof.
- Petit theft of the first degree and a first degree misdemeanor,²² if the property stolen is valued at less than \$40.
 - A person who commits the above misdemeanor offense and who has previously been convicted of any theft commits a third degree felony. This crime is ranked as a level 2 in the offense severity ranking chart.
 - A person who commits the above misdemeanor offense and has previously been convicted two or more times of any theft commits a third degree felony. This crime is ranked as a level 4 in the offense severity ranking chart.

Social media platform means any information service, system, Internet search engine, or access software provider that:

²⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²¹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²² A first degree misdemeanor is punishable by a definite term of imprisonment not exceeding 1 year. Sections 775.082 and 775.083, F.S.

- Provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site;
- Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity;
- Does business in the state; and
- Satisfies at least one of the following thresholds:
 - Has annual gross revenues in excess of \$100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index.
 - Has at least 100 million monthly individual platform participants globally.²³

The bill amends s. 812.015, F.S., relating to retail theft, to:

- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense, punishable as a third degree felony. This crime is listed as a level 5 in the offense severity ranking chart.
- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense and, in the course of organizing or committing the offense, soliciting the participation of another person in the offense through the use of a social media platform, as defined in s. 501.2041(1), F.S., punishable as a second degree felony. This crime is listed as a level 6 in the offense severity ranking chart.

The bill provides it is a first degree felony, if a person commits retail theft under s. 812.015(8) or (9), F.S., and:

- Has two or more previous convictions of violations of either or both of those subsections; or
- Possesses a firearm during the commission of such offense. This crime is listed as a level 8 in the offense severity ranking chart.

Additionally, the bill amends the aggregation criteria for specified retail theft offenses. For retail theft offenses under ss. 812.015(8), 812.015(9), and 812.015(10), F.S., where a specified number of retail thefts, specified value of property stolen, or specified number of items stolen, is aggregated to determine the total number of retail thefts or value of property stolen, the bill increases the aggregation period from 30 days to 45 days.

The bill provides an effective date of October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ Section 501.2041(1)(g), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminary review provided that the bill may have a positive indeterminate prison bed impact.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.014, 812.015, 921.0022, and 784.07.

²⁴ Office of Economic and Demographic Research *SB 1222 Preliminary Estimate*, (on file with the Senate Committee on Criminal Justice).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 23, 2024:

The committee substitute makes the following technical changes by:

- Adding necessary statute citations.
- Correcting the Offense Severity Ranking Chart regarding the punishment for retail theft, s. 812.015(9)(b) F.S., to reflect the increase to a 45 day period.
- Reordering the new offense added in the Offense Severity Ranking Chart.

- B. **Amendments:**

None.