

STORAGE NAME: h1231.cpcs.doc

DATE: March 30, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
ANALYSIS**

BILL #: HB 1231

RELATING TO: Property Crimes

SPONSOR(S): Representative(s) Kravitz

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
 - (2) JUDICIAL OVERSIGHT
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

The bill reduces the threshold for felony theft from \$300 to \$150.

The bill also amends other theft related statutes as follows:

- The bill makes the following types of shoplifting a felony if the property stolen is valued at \$150 or more: coordinating the activities of one or more individuals in committing a theft; committing a retail theft from more than one location within a 48 hour period; acting in concert with one or more other individuals to distract the merchant in order to carry out the offense; possessing a controlled substance or drug paraphernalia at the time of the offense.
- The bill requires a court to order the suspension of the driver's license of each person adjudicated guilty of retail theft under s. 812.014 or s. 812.015 regardless of the value of the property stolen.
- The bill creates a second degree misdemeanor offense for any person who requests a refund of merchandise, money or any other thing of value through the use of a fraudulently obtained receipt or a false receipt. The bill also creates a first degree misdemeanor for any person who actually obtains merchandise or money through the use of a fraudulently obtained receipt or a false receipt.
- The bill creates a new section of law which provides that any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows or has reasonable cause to believe is stolen commits a second degree misdemeanor if the value of the property is less than \$150 and a third degree felony if the value of the property is \$150 or more.
- The bill makes it a third degree felony to: 1) counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or; 2) possess a counterfeit payment instrument.
- The bill increases the penalty for a third or subsequent worthless check violation from a third degree felony to a second degree felony.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Theft

The theft statute provides the following:

A person commits 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:

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

s. 812.014, F.S.

The level of a theft offense depends on the value and type of property stolen as follows:

1. Petit Theft:

- a. The theft of property worth less than \$100 is a second degree misdemeanor. s. 812.014(3)(a), F.S.
- b. The theft of property worth between \$100 and \$300 is a first degree misdemeanor. s. 812.014(2)(e), F.S.

2. Grand Theft of the Third Degree: It is grand theft of the third degree, a third degree felony, if the property stolen is worth between \$300 and \$20,000. The offense is ranked in the Offense Severity Ranking Chart of the Criminal Punishment Code based on the value of the property as follows:

- a. Theft of property valued at more than \$300 but less than \$5,000 is a Level 2 offense. ss. 812.014(2)(c)1 and 921.0022(3)(b), F.S.
- b. Theft of property valued at \$5,000 but less than \$10,000 is a Level 3 offense. ss. 812.014(2)(c)2 and 921.0022(3)(c), F.S.

- c. Theft of property valued at \$10,000 or more but less than \$20,000 is a Level 4 offense. ss. 812.014(2)(c)3 and 921.0022(3)(d), F.S.
 - d. Theft of any of a list of specified items including: a will, a firearm, a motor vehicle, a commercially farmed animal, a fire extinguisher, any amount of citrus consisting of 2,000 or more individual pieces of fruit, or property taken from a designated construction site is a Level 4 offense regardless of the value of the property. ss. 812.014(2)(c)4-10 and 921.0022(3)(d), F.S.
3. Grand Theft of the Second Degree: It is grand theft of the second degree, a second degree felony, if the property stolen is valued at \$20,000 or more but less than \$100,000. This offense is ranked as a Level 6 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. ss. 812.014(2)(b) and 921.0022(3)(f), F.S.
4. Grand Theft of the First Degree: It is grand theft of the first degree, a first degree felony if:
- a. The property stolen is valued at \$100,000 or more or
 - b. If the offender commits any grand theft and in the course of committing the offense the offender uses a motor vehicle as a instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another or
 - c. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000.
 - s. 812.014(2)(a), F.S.

This offense is ranked as a Level 7 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code. The lowest permissible sentence for a Level 7 offense is 21 months in prison.

Retail Theft

Section 812.015 relates to retail and farm theft. Retail theft is defined as follows:

[T]he taking possession of or carrying away of merchandise, money or negotiable instruments, altering or removing a label or price tag, or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Antishoplifting or Inventory Device

An "antishoplifting or inventory control device" is a mechanism which detects the "removal from a mercantile establishment.....of specially marked or tagged merchandise." s. 812.015(1)(h), F.S. An "antishoplifting or inventory control device countermeasure" is an item which is "designed, manufactured, modified or altered to defeat an antishoplifting or inventory control device". s. 812.015(1)(i), F.S. It is a first degree misdemeanor to possess such a countermeasure and a third degree felony to use or attempt to use a countermeasure within a retail establishment. s. 812.015(7), F.S.

Worthless Check

The worthless check statute prohibits a person from drawing, making, uttering, issuing or delivering to another any check, draft or debit card order for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing or delivering that the maker did not have sufficient funds on deposit with which to pay on presentation. Sec. 832.05(2), F.S. A violation of this section is a first degree misdemeanor if the amount is less than \$150 and is a third degree felony if the amount is more than \$150.

C. EFFECT OF PROPOSED CHANGES:

The bill lowers the threshold for felony theft from \$300 to \$150. The bill requires the Department of Law Enforcement, in conjunction with local law enforcement agencies, retail trade groups and other interested parties to prepare and distribute to media organizations a media campaign to increase public awareness of the provisions of this bill which lower the dollar threshold for felony theft. The bill provides that the department may use any available funds for the media campaign, including funds contributed for such purpose by any public or private entity.

Retail Theft:

The bill clarifies the definition of "retail theft" by adding the taking away of "property" and by adding the altering or removing of a universal product code to the definition.

The bill provides that if a person commits retail theft, it is a second degree felony if the property stolen is valued at \$150 or more and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which the amount of each individual theft is aggregated to determine the value of the property stolen.
- Commits theft from more than one location within a 48 hours period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen.
- 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 act in other ways to coordinate efforts to carry out the offense.
- Unlawfully possess a controlled substance or drug paraphernalia at the time of the offense.
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.
- Resists with violence efforts by the merchant, merchant's employee or law enforcement officer to detain the offender. As used in this paragraph, the term "violence" includes, but is not limited to, the use of a gun, knife, or other weapon or the use of physical force.

The bill ranks these offenses in Level 6 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

Detention by Merchant

Section 812.015 authorizes a merchant or a law enforcement officer to detain an offender for a reasonable length of time when the merchant or officer has probable cause to believe that a retail theft has been committed and that the property can be recovered. If a merchant or a merchant's employee takes an offender into custody, a law enforcement officer must be immediately called to the scene. The bill amends the definition of "merchant's employee" to include a private security guard employed or contracted by one of more merchants or by a shopping center, shopping mall, or other business establishment.

The bill further provides that if a merchant or merchant's employee takes an offender into custody or acts as a witness with respect to any person taken into custody the merchant or merchant's employee may provide his or her business address rather than home address to any investigating law enforcement officer.

Antishoplifting Devices:

The bill increases the offense of possession of a antishoplifting countermeasure to a third degree felony. Thus, the severity of the offense of possession of a countermeasure would be the same as that of use of a countermeasure. The bill ranks these offenses as Level 2 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code.

The bill also amends the definition of "antishoplifting or inventory control countermeasure" to include a device which is used to defeat any antishoplifting device. This is in response to an court decision that held that tinfoil wrapped around store security sensors did not fall within the countermeasure definition because the tinfoil was not manufactured to defeat the sensors and although it may have been used for that purpose, the term "used" was not contained in the definition. State v. Blunt, 744 So.2d 1258 (Fla. 3rd DCA 1999). The bill also adds "any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt" to the definition of "antishoplifting or inventory control device".

Suspension of Driver's License

Section 812.014(5)(a), F.S. requires a court to order the suspension of the driver's license of any person adjudicated guilty of theft of gasoline. The bill requires a court to order the suspension of the driver's license of each person adjudicated guilty of retail theft under s. 812.014 or s. 812.015 regardless of the value of the property stolen. The bill requires that the judge order a six month suspension for a first conviction and a one year suspension for a second or subsequent conviction.

The bill authorizes a court to revoke, suspend or withhold issuance of a driver's license of a person less than 18 years of age who commits theft as an alternative to sentencing the person to:

1. Probation or commitment to the Department of Juvenile Justice, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.
2. Probation, commitment to the Department of Juvenile Justice, community control or incarceration if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.

The bill also provides a procedure for the revocation, suspension or withholding of issuance of a driver's license under the newly created section.

Fraudulently Obtained or False Receipt

The bill creates a second degree misdemeanor offense for any person who requests a refund of merchandise, money or any other thing of value through the use of a fraudulently obtained receipt or a false receipt. The bill also creates a first degree misdemeanor for any person who actually obtains merchandise or money through the use of a fraudulently obtained receipt or a false receipt.

Dealing in Stolen Property By Use of Internet

Trafficking or endeavoring to traffic in stolen property which is also called "dealing in stolen property" is currently a second degree felony. Sec. 812.019, F.S. The bill creates a new section of law which provides that any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows or has reasonable cause to believe is stolen commits a second degree misdemeanor if the value of the property is less than \$150 and is a third degree felony if the value of the property is \$150 or more. The bill ranks the felony offense in Level 4 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

Pretrial Intervention Program

The bill provides that in any criminal or civil action or proceeding under the theft statutes (ss. 812.012-812.037 or 812.081), or the worthless check statutes, the court shall consider the complete criminal record of the defendant, including but not limited to, the person's prior arrests, referral to pretrial intervention programs, pending criminal cases and prior convictions, regardless of whether adjudication was withheld.

The bill also provides that a person who commits a theft offense may not be referred to a pretrial intervention program for such violation if the person has previously been referred to a pretrial intervention program for any criminal violation.

Forgery

Sections 831.07 – 813.12 prohibit the following activities:

1. Falsely making, altering, forging or counterfeiting a bank bill or promissory note issued by an incorporated banking company with intent to injure any person. [Sec. 812.07]
2. Possessing ten or more similar false, altered, forged, or counterfeit notes, bills of credit, bank bills or notes, knowing the items to be false, altered, forged or counterfeit, with intent to utter and pass the items as true and thereby to injure or defraud any person. [Sec. 812.08]
3. Knowingly uttering or passing in payment as true any false, altered, forged or counterfeit note or any bank bill or promissory note with the intent to injure or defraud any person. [Sec. 831.09]
4. Possessing a false, forged or counterfeit bill or note with intent to utter and pass the bill or note knowing that it is false. [Sec. 831.11]
5. Connecting together parts of several banknotes, or other genuine instruments in such a manner as to produce one additional note or instrument with intent to pass all of them as genuine. [Sec. 831.12]

The bill amends each of these sections to add the terms “checks” and “drafts” to the list of instruments.

Counterfeiting a Payment Instrument

The bill creates the offense of counterfeiting a payment instrument. A “payment instrument” is defined by Florida law to be a “check, draft, warrant, money order, travelers’ check” or any other instrument used to facilitate the transfer of money, regardless of negotiability.” Section 560.103(14), F.S.

The bill defines the term “counterfeit” to mean: 1) the manufacture or arrangement to manufacture a payment instrument without permission of the organization whose name, routing number or account number appears on the payment instrument, or 2) the manufacture of any payment instrument with a fictitious name, routing number or account number.

The bill makes it a third degree felony to: 1) counterfeit a payment instrument with the intent to defraud a financial institution, account holder, or any other person or organization or; 2) for a person to have any counterfeit payment instrument in his or her possession. The bill ranks these offenses in Level 3 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

The bill further provides that the printing of a payment instrument in the name of a person or entity or with the routing number or account number of a person or entity without the permission of the person or entity to manufacture or reproduce such payment instrument with such name, routing number or account number is prima facie evidence of intent to defraud. The bill exempts law enforcement agencies who produce or display counterfeit payment instruments for investigative or educational purposes.

Worthless Check

The bill increases the penalty for a third or subsequent worthless check violation from a third degree felony to a second degree felony. The bill ranks the offense in Level 3 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

In current law, the worthless check statute does not apply to any check when the payee knows or has reason to believe that the maker or drawer did not have sufficient funds to ensure payment. The bill amends this provision to state that a payee accepting a check, draft, or written order does not have knowledge or reason to believe that the maker or drawer has insufficient funds to ensure payment of the check, draft, or other written order solely because the maker or drawer has previously drawn or issued a worthless check, draft, or written order to the payee.

The bill also creates a new subsection which prohibits a person from drawing, making, uttering, issuing or delivering to another any check, draft, or debit card order knowing at the time of the drawing that the order is drawn on a bank in which the drawer has no account or a closed account. This offense is a first degree misdemeanor if the amount of the check is less than \$150 and is a second degree felony if the amount of the check is \$150 or more. The bill ranks the felony offense in Level 3 of the Offense Severity Rank of the Criminal Punishment Code.

Task Force on Retail Crime

The bill “encourages” local law enforcement agencies to establish a “task force on retail crime.” The bill provides that the task force shall act as an advisory body to study the problem of retail crime and develop recommendations for handling retail crime and theft in an “expeditious and

uniform manner.” The task force should submit its recommendations to the sheriff or chief officer of the local law enforcement agency, the state attorney, and the chief judge of the judicial circuit. The majority of the membership of the task force must consist of persons “actively engaged in a retail business or employees of persons actively engaged in a retail business” and must be appointed by the sheriff.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 812.014, F.S. reducing dollar threshold amount for grand theft from \$300 to \$150.

Section 2: Requires Florida Department of Law Enforcement to develop media campaign to make public aware of bill’s provisions lowering dollar threshold for felony theft.

Section 3: Amends s. 812.015, F.S. relating to retail and farm theft.

Section 4: Creating s. 812.0155, F.S. requiring suspension of driver’s license following an adjudication of guilt for retail theft.

Section 5: Creating s. 812.017, F.S.; creating offense of use of a fraudulently obtained or false receipt.

Section 6: Creating s. 812.0195, F.S.; creating offense of dealing in stolen property by use of the internet.

Section 7: Creates s. 812.0351, F.S.; requiring court to consider complete criminal record.

Section 8: Amends s. 831.07, F.S.; relating to forging bank bills.

Section 9: Amends s. 831.08; relating to possessing certain forged notes.

Section 10: Amends s.831.09, F.S.; relating to uttering forged bills.

Section 11: Reenacts s. 831.10, F.S.

Section 12: Amends s. 831.11, F.S.; relating to bringing into the state forged bank bills.

Section 13: Amends s. 831.12, F.S.; relating to fraudulently connecting parts of genuine instruments.

Section 14: Creates s. 831.28, F.S.; relating to counterfeiting a payment instrument.

Section 15: Amends s. 832.05, F.S.; relating to giving worthless checks.

Section 16: Creates s. 832.11, F.S.; requiring court to consider complete criminal record.

Section 17: Amends s. 921.0022, F.S.; relating to Offense Severity Ranking Chart of Criminal Punishment Code.

Section 18: Amends s. 921.0022, F.S.; amending Offense Severity Ranking Chart of Criminal Punishment Code effective July 1, 2002.

Section 19: Relates to local task force on retail crime.

Section 20: Severability clause.

Section 21: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The bill lowers the threshold for felony theft from \$300 to \$150. The bill also significantly enhances the punishment for several common methods of committing retail theft by making the offenses a second degree felony and ranking them in Level 6 of the Offense Severity Rank of the Criminal Punishment Code. This is likely to have some prison bed impact on the Department of Corrections. The Criminal Justice Impact Conference will consider the prison bed impact of this bill on the Department of Corrections.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill lowers the threshold for felony theft from \$300 to \$150. However, more than a dozen statutes are modeled after the theft statute and use the \$300 felony threshold including such offenses as: rental theft, misappropriation of escrow funds and obtaining goods by use of a false or expired credit card. These statutes are not amended by the bill.

The provisions relating to retail theft does not criminalize any acts that are not currently punishable under Florida law but significantly enhances the punishment for several common methods of committing retail theft offenses. This could increase the severity of these offenses from a misdemeanor to a second degree felony, punishable by up to 15 years in prison. The bill ranks these offenses in level six of the Offense Severity Ranking Chart. This is the same level of offense as theft of property worth between \$20,000 and \$100,000 and as burglary of an occupied structure. For example, under current law, if an offender distracted a merchant in order to allow a coperpetrator to steal 200 dollars worth of merchandise, the offender could be charged as a principal with a first degree misdemeanor. Under this bill, this offense would be a second degree felony.

The provision allowing an employee to provide a business address rather than a home address to an investigating law enforcement officer may make it more difficult for a law enforcement officer to locate an employee, particularly if the employee leaves that employment.

The bill creates the offense of dealing in stolen property by use of the internet. However, it appears as if the current dealing in stolen property statute, which is a second degree felony and has a higher maximum penalty, would also cover property for sale over the internet. Therefore, it is not clear why this new section is necessary.

The section creating an offense of drawing or issuing a check knowing that the check is drawn on a bank in which the drawer has no account or a closed account is duplicative of subsection 832.05(2) which punishes a person for writing a check while knowing that the person has insufficient funds on deposit with which to pay the check. Under s. 832.05(2), it is a first degree misdemeanor to write a worthless check for less than \$150 and is a third degree felony to write a worthless check for more than \$150. It is not clear why, under the newly created subsection, it is a second degree felony rather than a third degree felony to write a check for more than \$150 on a non-existent or closed account.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

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