

STORAGE NAME: h1231s1.cpcs.doc

DATE: April 13, 2001

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

BILL #: CS/HB 1231

RELATING TO: Property Crimes

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative(s) Kravitz

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
 - (2) JUDICIAL OVERSIGHT
 - (3) HEALTHY COMMUNITIES
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 1231 amends several theft related statutes as follows:

- Provides that the theft of emergency medical equipment valued in excess of \$300 is a second degree felony.
- Provides that the following types of retail theft are a third degree felony if the property stolen is valued at \$300 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 and acting in concert with one or more other individuals to distract the merchant in order to carry out the offense. Makes a second violation of the section a second degree felony.
- Authorizes the trial court to order the revocation of a driver's license of a person upon a first conviction of theft. Requires the trial court to order the revocation of a driver's license of a person upon a second or subsequent conviction of theft.
- Creates an offense of dealing in stolen property by use of the Internet.
- 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.
- Amends the statute relating to the observation of dressing rooms by a merchant to provide that it is unlawful for a merchant to surreptitiously observe a customer in a dressing room. For purposes of the section, a merchant does not surreptitiously observe a customer if the merchant has reason to be aware of the presence of the presence of the merchant's employee in the dressing room, provided that the merchant posts visible notice within the area to be observed.
- Creates a section prohibiting "skimming" – unauthorized use of a scanning device to access information stored on a credit card with intent to defraud.

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.

C. EFFECT OF PROPOSED CHANGES:

Theft of Medical Equipment

The committee substitute makes the theft of any “emergency medical equipment” that is taken from a hospital, ambulatory surgical center, mobile surgical facility¹ or from an ambulance or air ambulance² and is valued at \$300 or more, a second degree felony. The committee substitute defines the term “emergency medical equipment” as mechanical or electronic apparatus used to provide emergency services and care or to treat medical emergencies. The offense will be punishable in the same manner as theft of between \$20,000 and \$100,000 of other types of property. The offense will be ranked in Level 7 of the Offense Severity Ranking Chart of the Criminal Punishment Code. The possible sentencing range for such an offense is a minimum of 21 months and a maximum of 15 years in prison.

Retail Theft:

The committee substitute 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 committee substitute provides that if a person commits retail theft, it is a third degree felony if the property stolen is valued at \$300 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.
- 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.

The committee substitute makes a second or subsequent violation of this section a second degree felony and ranks the offense in Level 6 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

Detention by Merchant

The committee substitute 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.

¹ s. 395.002(17), F.S.

² The terms “emergency services vehicle” and “air ambulance” are defined in s. 401.23, F.S.

Antishoplifting Devices:

The committee substitute increases the offense of possession of an 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 committee substitute ranks these offenses as Level 2 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code.

The committee substitute 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 a 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 committee substitute also adds "any electronic or digital imaging or 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 committee substitute allows 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 committee substitute requires a court to order the suspension of a driver's license upon a second or subsequent conviction for retail theft. The committee substitute provides that the first suspension of a driver's license under the section shall be for up to six months and a second or suspension of a driver's license shall be for one year.

The committee substitute 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 committee substitute 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 committee substitute 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 committee substitute 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 committee substitute 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 \$300 and is a third degree felony if the value of the property is \$300 or more. The committee substitute ranks the felony offense in Level 4 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

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 committee substitute amends each of these sections to add the terms "checks" and "drafts" to the list of instruments.

Counterfeiting a Payment Instrument

The committee substitute 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 committee substitute 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 committee substitute 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 committee substitute ranks these offenses in Level 3 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

The committee substitute 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 committee substitute exempts law enforcement agencies who produce or display counterfeit payment instruments for investigative or educational purposes.

Worthless Check

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. s. 832.05, F.S. The committee substitute amends this statute 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.

Task Force on Retail Crime

The committee substitute “encourages” local law enforcement agencies to establish a “task force on retail crime.” The committee substitute 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.

Scanning Device or Reencoder

The committee substitute creates section 817.625 to prevent credit card fraud by making it a third degree felony³ for a person to use

1. a scanning device to access, read, obtain, memorize or store information encoded on the magnetic strip of a credit card or debit card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user or
2. a reencoder to place information encoded on the magnetic strip of a credit card or debit card onto the magnetic strip of a different card without the permission of the authorized user of the card and with the intent to defraud the authorized user

The committee substitute defines the terms “scanning device”, “reencoder”, and “merchant” . The committee substitute also makes a second or subsequent violation of the provision a second degree felony and ranks this offense within level 5 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

Dressing Room

Section 877.26 makes it unlawful for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant’s

³ The offense is ranked in level 4 of the Offense Severity Ranking Chart of the Criminal Punishment Code.

dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy. The offense is a first degree misdemeanor.

The committee substitute amends this statute to make it unlawful for a merchant to surreptitiously observe customers in the merchant's dressing room. The committee substitute also provides that for purposes of this section, a merchant or merchant's employee does not surreptitiously and directly observe a customer if the customer knows or has reason to be aware of the presence of the merchant or merchant's employee in the merchant's dressing room, even when such room provides a reasonable expectation of privacy, provided that the merchant posts visible notice within the area to be observed.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 812.014, F.S.; providing that the theft of emergency medical equipment valued over \$300 is a second degree felony.

Section 2: Amends s. 812.015, F.S. relating to retail and farm theft.

Section 3: Creating s. 812.0155, F.S. relating to suspension of driver's license following an adjudication of guilt for retail theft.

Section 4: Creating s. 812.017, F.S.; creating offense of use of a fraudulently obtained or false receipt.

Section 5: Creating s. 812.0195, F.S.; creating offense of dealing in stolen property by use of the internet.

Section 6: Creating s. 817.625; relating to use of scanning device or reencoder to defraud.

Section 7: Amends s. 831.07, F.S.; relating to forging bank bills.

Section 8: Amends s. 831.08; relating to possessing certain forged notes.

Section 9: Amends s.831.09, F.S.; relating to uttering forged bills.

Section 10: Reenacts s. 831.10, F.S.

Section 11: Amends s. 831.11, F.S.; relating to bringing into the state forged bank bills.

Section 12: Amends s. 831.12, F.S.; relating to fraudulently connecting parts of genuine instruments.

Section 13: Creates s. 831.28, F.S.; relating to counterfeiting a payment instrument.

Section 14: Amends s. 832.05, F.S.; relating to giving worthless checks.

Section 15: Amends s. 877.26, F.S.; relating to observation of dressing rooms.

Section 16: Amends s. 921.0022, F.S.; relating to Offense Severity Ranking Chart of Criminal Punishment Code.

Section 17: Relates to local task force on retail crime.

Section 18: Severability clause.

Section 19: 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 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 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, the current dealing in stolen property statute, which is a second degree felony and therefore has a higher maximum penalty, would also cover property for sale over the internet. It is not clear why this new section is necessary.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its March 30, 2001 meeting, the Committee on Crime Prevention, Corrections & Safety adopted two amendments to the bill then temporarily passed the bill. At the April 12, 2001 meeting, the sponsor offered a strike-everything amendment that substantially altered the original bill as follows:

- The amendment removed the provisions of the bill which would have reduced the threshold for felony theft in section 812.014 from \$300 to \$150. It also inserted a provision regarding theft of certain emergency medical equipment.
- The amendment removed the addition to the definition of "merchant" which would have included private security guards.
- The amendment inserted reference to electronic or digital imaging within the definition of "antishoplifting or inventory control device".
- The amendment made a first violation of the retail theft statute a third degree felony, rather than a second degree felony as in the bill and also raises the threshold from \$150 to \$300. The amendment makes a second conviction for this offense a second degree felony. The amendment also removed the provisions making the unlawful possession of a controlled substance and resisting a merchant with violence part of the "retail theft" offense.
- The amendment made the suspension of a driver's license on a first theft conviction permissive, rather than mandatory. The suspension will be mandatory upon a second or subsequent conviction.
- The amendment raised the threshold for felony dealing in stolen property by use of the internet from \$150 to \$300.

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- The amendment removed the language which would have prevented a person from being referred to a pretrial intervention program if the person has previously been referred to such a program.
- The amendment removed the provisions of the bill relating to writing a check when the drawer has no account or a closed account. The amendment also removed the language from the bill making a third or subsequent violation of the worthless check statute a second degree felony.

The committee adopted the strike everything amendment and two amendments to the amendment. The first amendment to the amendment created section 817.625 relating to the use of a scanning device or reencoder to commit credit card fraud. The second amendment to the amendment related to observation of dressing rooms by merchants. The bill, as amended, was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz