

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 1100

SPONSOR: Senator Lynn

SUBJECT: Theft

DATE: April 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1100 amends the theft statute to provide that the theft of property that has been deployed by a law enforcement officer is a first degree felony. The bill treats the theft of a piece of property of any value that has been deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more. The bill ranks this offense in level 7 of the offense severity ranking chart of the Criminal Punishment Code.

The bill also provides that it is a second degree felony to alter the “fifth wheel” on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft. This offense is unranked, so it will default to a level 4 ranking pursuant to s. 921.0023, F.S.

This bill substantially amends sections 812.014 and 921.0022, and creates section 812.0147, Florida Statutes.

II. Present Situation:

Theft

Section 812.014, F.S., provides that 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:

- 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 the use of the property.

If the property stolen is valued at \$100,000 or more, or is cargo valued at \$50,000 or more, the offense is a first degree felony, punishable by up to thirty years in prison.

Fifth Wheel

Section 320.01(11), F.S., refers to a “fifth wheel” in the definition of “tractor trailer,” which means “a motor vehicle which has four or more wheels and is designed and equipped with a fifth wheel for the primary purpose of drawing a semitrailer that is attached or coupled thereto by means of such fifth wheel and which has no provision for carrying loads independently.” Therefore, insofar as the definition of “tractor trailer,” the fifth wheel appears to be a device for coupling the tractor trailer and the semitrailer.

III. Effect of Proposed Changes:

Senate Bill 1100 amends s. 812.014(2), F.S., to provide that the theft of property that has been “deployed” by a law enforcement officer is a first degree felony. The bill would treat the theft of a piece of property of any value that has been deployed by a law enforcement officer in the same manner as the theft of other property valued at \$100,000 or more. The bill amends s. 921.0022, F.S., to rank this offense in level 7 of the offense severity ranking chart of the Criminal Punishment Code. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is approximately 21 months in prison, absent mitigation. The maximum penalty is 30-years imprisonment.

One of the meanings of the term “deploy” is “to put into use or action.”¹ Presumably, this offense is intended to address the situation in which a law enforcement officer uses cargo to apprehend cargo thieves or “follow a trail to the people in charge of fencing operations,”² and also the situation in which law enforcement officers set out a decoy truck with a tracking device, which, if stolen, can be tracked to determine where the truck is going and, ultimately, lead to the apprehension of those involved in the theft.³ However, the bill places no limiting construction on “property that has been deployed by a law enforcement officer,” so the offense may cover the theft of property put into use by a law enforcement officer in any law enforcement sting operation, or in any other context or for any reason.

The bill also creates s. 812.0147, F.S., which provides that it is a second degree felony to alter the “fifth wheel” on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit or attempt to commit a theft. This offense is unranked, so it will default to a level 4 ranking pursuant to s. 921.0023, F.S. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is a non-prison sanction. The maximum penalty is 15-years imprisonment.

¹ The American Heritage Dictionary of the English Language (4th Edition).

² “It’s a Crime.” *Viewpoint*, v. 24, No. 2 (1999), American Association of Insurance Services.

³ “Cargo Theft Bust.” WCJB TV 20 News (<http://www.wcjb.com/news.asp?id=9339>)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections. The bill ranks the offense of theft of property deployed by a law enforcement officer in level 7 of the offense severity ranking chart. Under current law, the severity of the offense would depend on the value of the property. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is approximately 21 months in prison, absent mitigation. The maximum penalty is 30-years imprisonment. The bill also creates a second degree felony offense for altering a fifth wheel on a heavy commercial motor vehicle with the intent to use the fifth wheel to commit theft. This offense is unranked, so it will default to a level 4 ranking pursuant to s. 921.0023, F.S. The lowest permissible sentence for the offense (if the offender has no prior criminal history or additional offense) is a non-prison sanction. The maximum penalty is 15-years imprisonment.

VI. Technical Deficiencies:

The term “commercial motor vehicle” is defined in ch. 320, F.S., but there is no definition of the term “heavy commercial motor vehicle” contained in Florida Statutes. The term should probably be defined or language should be provided that makes it clear as to what vehicles are covered by the term.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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