

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 207 CS                      Burglary During a Declared State of Emergency  
**SPONSOR(S):** Benson and others  
**TIED BILLS:** none                      **IDEN./SIM. BILLS:** CS/SB 282

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N, w/CS	Bond	Kramer
2) Justice Appropriations Committee	11 Y, 0 N	Sneed	DeBeaugrine
3) Justice Council	10 Y, 0 N, w/CS	Bond	De La Paz
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill increases the penalties for burglary and theft when the offender commits such crimes during the time and within the area of a declared state of emergency.

The Criminal Justice Estimating Conference estimated that a prior version of this bill will have an indeterminate minimal prison bed impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates new criminal offenses.

Promote personal responsibility -- This bill deters wrongful conduct by creating new criminal offenses for such conduct.

#### B. EFFECT OF PROPOSED CHANGES:

Looting is a common term that applies to crimes such as burglary or theft that occur during a riot or civil emergency. Florida law does not have a separate crime for looting. Looting crimes are prosecuted under criminal laws prohibiting burglary and theft.

Chapter 252 provides for the Governor's powers and duties during an emergency. Section 252.36(2), F.S., provides that the Governor must issue an executive order or proclamation if an emergency has occurred or is imminent. The Governor's powers during an emergency are broad.

In general, the maximum penalty for a third degree felony is 5 years imprisonment and a fine of no more than \$5,000. The maximum penalty for a second degree felony is 15 years imprisonment and a fine of no more than \$10,000. The maximum penalty for a first degree felony is 30 years imprisonment and a fine of no more than \$10,000. In limited circumstances, these maximums may be increased (such as certain reoffenders or where the 10/20/life law mandates a longer sentence). The Criminal Punishment Code<sup>1</sup> prescribes a mathematical formula for calculating the minimum sentence for any offense. Offenses are categorized into 10 levels, higher numbered levels result in a higher minimum sentence.

#### Effect of Bill

This bill increases criminal penalties for looting offenses, that is, certain offenses related to theft and burglary committed during a state of emergency. This bill also requires that a person arrested for any of these offenses during a state of emergency must be held until the first appearance hearing, and thus can only be admitted to bail after appearance before a judge. The following chart summarizes all of the offenses reclassified by this bill and the increased penalty:

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
Burglary of a dwelling, whether occupied or not, if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. ss. 810.02(3)(a)-(b), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an occupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(c), F.S.	2nd degree felony, Level 6	1st degree felony, Level 7

<sup>1</sup> Sections 921.002 - 0027, F.S.

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
Burglary of an occupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(3)(d), F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Burglary of an unoccupied structure if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(a), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Burglary of an unoccupied conveyance if the offender does not make an assault or battery, and the offender is not and does not become armed with a dangerous weapon or explosive. s. 810.02(4)(b), F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$20,000 and \$100,000. s. 812.014(2)(b)1., F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Theft of cargo that has entered the stream of commerce and is valued less than \$50,000. s. 812.014(2)(b)2., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of certain emergency medical equipment valued in excess of \$300. s. 812.014(2)(b)3., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of property valued between \$10,000 and \$20,000. s. 812.014(2)(c)3., F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$10,000 and \$20,000. s. 812.014(2)(c)2., F.S.	3rd degree felony, Level 3	2nd degree felony, Level 4

C. SECTION DIRECTORY:

Section 1 amends s. 810.02, F.S., reclassifying certain burglary offenses committed during a state of emergency.

Section 2 amends s. 812.014, F.S., reclassifying certain theft offenses committed during a state of emergency.

Section 3 provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference estimated that the bill, as originally filed, would have an indeterminate minimal prison bed impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Provisions requiring a person to be held pending first appearance may increase local government expenditures due to increased jail bed utilization.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

If provisions of the bill requiring offenders to be held pending first appearance increases jail bed utilization, the bill would require counties to expend funds. Even if the required expenditures were determined to be significant, this bill would appear to be exempt because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On February 23, 2005, the Criminal Justice Committee adopted one amendment to this bill. The amendment specifies that a person arrested for either of the felonies created by this bill must be held until the court conducts a first appearance hearing. The bill was then reported favorably with a committee substitute.

On April 18, 2005, the Justice Council adopted a strike-all amendment conforming the bill to CS/SB 282. The amendment removed the newly created burglary offenses, replacing them with a reclassification of existing burglary offenses. The amendment also added a reclassification of theft offenses that occur during a state of emergency. The amendment also removed the newly created references in the Offense Severity Ranking Chart. The bill was then reported favorably with a committee substitute.