

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:

In general, burglary is the unlawful entering or remaining in a dwelling, structure, or conveyance with the intent to commit any crime therein. A dwelling is a personal residence, a structure is any building other than a personal residence, and a conveyance is a vehicle such as a car. Burglary does not apply to a premises that is open to the public, nor where the offender was invited into the premises (until such time as the invitation is revoked).

Punishment for committing the crime of burglary is divided into three levels. Burglary of an unoccupied dwelling, structure, or conveyance is a third degree felony. Punishment is increased to a second degree felony if the dwelling, structure, or conveyance is occupied. Burglary increases to a first degree felony if the burglar also commits battery on another person, is armed, or causes significant damage to the premises.

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.

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. In general, burglary of dwellings and structures that occurs during or immediately after a disaster such as a hurricane, in areas where the residents have evacuated, would constitute a third degree felony (as the dwellings and structures would be unoccupied due to the evacuation).¹ The burglar who succeeds in stealing property (the goal of a looter) could also be charged with theft. Theft is punishable based on the value of the property stolen, ranging from misdemeanor petit theft if the value is below \$300, up to a first degree felony if the property is valued over \$100,000.²

This bill amends the burglary law at s. 810.02, F.S., to add two new burglary crimes for burglaries, in the nature of looting, that occur during a state of emergency. This bill provides that burglary of a **dwelling** during the time and within the area of a declared state of emergency is a first degree felony. Burglary of a **structure** during the time and within the area of a declared state of emergency is a second degree felony if, in the course of the burglary, the offender commits grand theft of property valued at \$300 or more.

In general, the maximum sentence for a second degree felony is 15 years imprisonment, and the maximum sentence for a first degree felony is 30 years imprisonment. The maximum fine for either a first or second degree felony is \$10,000. The Criminal Punishment Code³ prescribes a mathematical formula for calculating the minimum sentence for any offense. Offenses are categorized into 10 levels,

¹ Sometimes, residents refuse to evacuate due to a fear of looting, and in so doing, place themselves in danger of injury or death from the hurricane.

² These simplified descriptions omit some factors that change the range of punishments. These other factors are not relevant to the discussion, and distract from the discussion.

³ Sections 921.002 - 0027, F.S.

higher numbered levels result in a higher minimum sentence. This bill classifies the first degree felony of burglary of a dwelling during a state of emergency as a Level 8 offense, and classifies the second degree felony of burglary of a structure during a state of emergency as a Level 7 offense. Under current law, an offender who commits a single act of burglary of an unoccupied dwelling while unarmed commits a third degree felony, a level 4 offense. If the offender has no prior record, and no sentencing enhancement is applicable, there is no lowest permissible sentence, and the maximum sentence would be 60 months in state prison. By this bill, the lowest permissible sentence for burglary of a structure during an emergency would be 21 months in prison, with a maximum of 180 months; and the lowest permissible sentence for burglary of a dwelling during an emergency would be 34.5 months in state prison, with a maximum of 360 months.

This bill also requires that a person arrested for either of these burglary offenses must be held until first appearance, and thus can only be admitted to bail after appearance before a judge.

C. SECTION DIRECTORY:

Section 1 amends s. 810.02, F.S., creating new crimes related to burglary during a state of emergency.

Section 2 amends s. 921.0022, F.S., placing the new offenses into the Criminal Punishment Code chart.

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 estimates that this bill will 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 could increase 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.