

# 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.)

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Prepared By: Justice Appropriations Committee

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BILL: CS/SB 282

SPONSOR: Domestic Security Committee and Senators Aronberg and Fasano

SUBJECT: Criminal Acts/State of Emergency

DATE: April 22, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
2.	<u>Pardue</u>	<u>Skelton</u>	<u>DS</u>	<u>Fav/CS</u>
3.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Senate Bill 282 provides for reclassification of the felony degrees for burglary and grand theft when these criminal offenses are committed within an area that is subject to a state of emergency declared by the Governor under ch. 252, F.S. In addition to reclassification, the committee substitute increases the severity ranking level of the offenses to one level above the ranking of the offense committed. The committee substitute provides that the person arrested may not be released prior to a first-appearance hearing with the committing magistrate.

This committee substitute substantially amends the following sections of the Florida Statutes: 810.02 and 812.014.

## II. Present Situation:

### Burglary under ss. 810.02(3) and (4), F.S.

Under s. 810.02(3), F.S., burglary is a second degree felony. Under s. 775.082, F.S., the maximum penalty for a second degree felony is 15-years imprisonment. A person commits this offense if, in the course of committing the offense, he or she does not commit an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the person enters or remains in a:

- Dwelling, and there is another person in the dwelling at the time the offender enters or remains;
- Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;

- Structure, and there is another person in the structure at the time the offender enters or remains; or
- Conveyance, and there is another person in the conveyance at the time the offender enters or remains.

Section 810.02(1)(b)1., F.S. defines “burglary” as

- Entering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter; or
- Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
  - Surreptitiously, with the intent to commit an offense therein;
  - After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or
  - To commit or attempt to commit a forcible felony.

Under s. 810.02(4), F.S., burglary is a third degree felony. Under s. 775.082, F.S., the maximum penalty for a third degree felony is 5-years imprisonment. A person commits this offense if, in the course of committing the offense, the offender does not commit an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the person enters or remains in a:

- Structure, and there is not another person in the structure at the time the offender enters or remains; or
- Conveyance, and there is not another person in the conveyance at the time the offender enters or remains.

### **Grand theft under s. 812.014(2)(b) and (2)(c), F.S.**

Section 812.014(1), F.S., states 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.
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Under s. 812.014(2)(b), F.S., a person commits grand theft of the second degree, which is a second degree felony, if:

- The property stolen is valued at \$20,000 or more, but less than \$100,000;

- The property stolen is cargo valued at less than \$50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
- The property stolen is emergency medical equipment, valued at \$300 or more, that is taken from a facility licensed under ch. 395, F.S., or from an aircraft or vehicle permitted under ch. 401, F.S.

Under s. 775.082, the maximum penalty for a second degree felony is 15-years imprisonment.

Under s. 812.014(2)(c), F.S., a person commits grand theft of the third degree, which is a third degree felony, if the property stolen is:

- Valued at \$300 or more, but less than \$5,000;
- Valued at \$5,000 or more, but less than \$10,000;
- Valued at \$10,000 or more, but less than \$20,000;
- A will, codicil, or other testamentary instrument;
- A firearm;
- A motor vehicle, except as provided in 812.014(2)(a), F.S.
- Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility;
- Any fire extinguisher;
- Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.
- Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d), F.S.;
- Any stop sign; or
- Anhydrous ammonia.

In terms of the maximum penalty, all of the criminal acts of theft are indistinguishable; since they are all third degree felonies, the maximum penalty for any of these offenses is 5-years imprisonment. However, the Legislature has distinguished some of these acts as being more serious than others by ranking some of these acts higher in the Criminal Punishment Code's offense severity ranking chart (s. 921.0022, F.S.) than other acts. For example, theft of property valued at \$5,000 or more, but less than \$10,000, is a Level 3 offense; theft of property valued at \$10,000 or more, but less than \$20,000, is a Level 4 offense. Each level accrues a specific number of sentencing points; the greater the ranking level, the greater the number of points. Assuming the theft is the primary offense, the sentencing points accrued for the offense's level as a primary offense, combined with any sentencing points accrued for other factors, such as additional offenses and prior offenses, determine total sentencing points, which when entered into a mathematical formula, determine the lowest permissible sentence and the length of the prison sentence, if the lowest permissible sentence scored is a prison sentence.

### **Emergency declaration by the Governor under ch. 252, F.S.**

Section 252.36(1)(a), F.S., provides, in part, that, in the event of an emergency beyond local control, the Governor, or, in the Governor's absence, her or his successor as provided by law, may assume direct operational control over all or any part of the emergency management

functions within this state, and she or he shall have the power through proper process of law to carry out the provisions of this section.

Section 252.36(1)(b), F.S., provides that, pursuant to the authority vested in her or him under paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. Such executive orders, proclamations, and rules shall have the force and effect of law.

Section 252.36, F.S., provides that a state of emergency shall be declared by executive order or proclamation of the Governor if she or he finds an emergency has occurred or that the occurrence or the threat thereof is imminent. The state of emergency shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency. All executive orders or proclamations issued under this section shall indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination. An executive order or proclamation shall be promptly disseminated by means calculated to bring its contents to the attention of the general public; and, unless the circumstances attendant upon the emergency prevent or impede such filing, the order or proclamation shall be filed promptly with the Department of State and in the offices of the county commissioners in the counties to which the order or proclamation applies.

### **Hurricane Season of 2004**

During the period of August – November 2004, the State of Florida experienced a series of natural disasters and conditions that warranted the invocation of the executive powers of Chapter 252. The state experienced Tropical Storm Bonnie, Hurricanes Charley, Frances, Ivan and Jeanne and all of the associated response and recovery efforts that are ongoing even today. All 67 counties in Florida declared local states of emergency at least once during the period. Several counties were in the path of multiple storms and suffered extensive public infrastructure and individual citizen losses. Structural damage from Hurricane Ivan is being exacerbated by torrential weather systems that have passed through the Florida panhandle region in the last two weeks with still-unrepaired roofs giving way to new storm conditions. In addition, Marion County, which experienced damage from multiple storms last year has suffered major wind damage again from what may be classified as “straight line wind” or a tornado (still undetermined by the National Weather Service) in the last week.

Residents of the state, businesses and governmental entities have suffered financial setbacks, restoration of service concerns, and continuity of business operations problems along with the personal frustrations associated with the recovery from a major disaster. Personal, emotional tolls for residents and business owners are hard to quantify, but may lead to additional ongoing problems and expenses from medical costs associated with treatment for physical or mental stress related to the storm response and recovery.

A request for information from Department of Law Enforcement regional offices around the state drew several anecdotal responses that showed that the public, in general, behaved lawfully during and after the storms. There were some additional reports of burglaries, robberies, curfew violations, disorderly conduct and minor looting in some areas of the state. One region volunteered that the fraud and price gouging laws currently in place were adequate for the situations that were faced. One situation that caused concern for law officers around the state was the stealing of state D.O.T. generators from major intersections. In order to reduce the law enforcement staffing needs for traffic direction, there was an attempt to place large D.O.T. generators at intersections to power traffic signals and restore traffic flow on major thoroughfares. It was reported that generators were actually stolen from these intersections, so the plan had to be re-evaluated and law enforcement personnel had to be re-assigned to traffic duty.

### **III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 282 amends s. 810.02(3), F.S., to reclassify the burglary offense contained in that subsection from a second degree felony to a first degree felony<sup>1</sup> if the burglary is committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The reclassified offense is ranked one level above the ranking of the offense committed. For example, s. 810.02(3)(c), F.S., which deals with burglary of an occupied structure when there is no assault or battery and the offender is unarmed, is a Level 6 offense. A first-time offender who commits this offense alone does not score a lowest permissible sentence of imprisonment (though the sentencing court could impose a sentence of imprisonment). If this offense is reclassified and the level increases one ranking, the reclassified offense is a Level 7 offense. A first-time offender who commits this offense alone scores a lowest permissible sentence of imprisonment, and the sentencing court could not impose a lesser sentence absent a mitigating factor being present.

Similarly, the committee substitute amends s. 810.02(3), F.S., to reclassify the burglary offense contained in that subsection from a third degree felony to a second degree felony if the burglary is committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The reclassified offense is ranked one level above the ranking of the offense committed.

Similarly, the committee substitute amends s. 812.014(2)(b), F.S., to reclassify the grand theft offense contained in that paragraph from a second degree felony to a first degree felony, and amends s. 812.014(2)(c), F.S., to reclassify the grand theft offense contained in that paragraph from a third degree felony to a second degree felony, if those grand thefts were committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The reclassified offenses are ranked one level above the ranking of the offenses committed.

The committee substitute requires that a person arrested for committing a burglary within a declared state of emergency area may not be released before appearing before a committing magistrate at a first-appearance hearing.

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<sup>1</sup> Under s. 775.082, F.S., a first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided, by imprisonment for a term of years not exceeding life imprisonment.

The committee substitute takes effect July 1, 2005.

**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 estimates that the committee substitute has an indeterminate but likely minimal prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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

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