

# 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: Criminal Justice Committee

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BILL: SB 1746

INTRODUCER: Senator Aronberg

SUBJECT: Criminal Acts/State of Emergency

DATE: March 9, 2006

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

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

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## I. Summary:

The bill reclassifies the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term “conditions arising from the emergency” means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified.

A person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

This bill substantially amends sections 810.02 and 812.014, Florida Statutes.

## II. Present Situation:

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

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(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.

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. 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 s. 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. 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 that may be 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.

#### **Examples of enhanced penalties unlawful acts committed during a declared state of emergency**

Section 501.160(2), F.S., provides that, upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204, F.S., for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition remains in effect until the declaration expires or is terminated.

Section 501.204(1), F.S., states that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful. This section is in Part II of ch. 501, F.S. (the Florida Deceptive and Unfair Trade Practices Act). Section 501.160(8), F.S., provides that any violation of the section may be enforced by the Department of Agriculture and Consumer Services, the office of the state attorney, or the Department of Legal Affairs.

#### **2005 legislation providing for reclassification of certain felonies committed during a declared state of emergency**

In 2005, the Legislature passed HB 207.<sup>1</sup> The House bill would have amended s. 810.02(3), F.S., to reclassify the burglary offense contained in that subsection from a second degree felony to a

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<sup>1</sup> The House bill was identical to SB 282 by Senator Aronberg.

first degree felony<sup>2</sup> if the burglary was committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The offense severity ranking level of the burglary would have been increased by one level if reclassified.

The House bill also would have amended 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 was committed within an area subject to a state of emergency declared by the Governor under ch. 252, F.S. The offense severity ranking level of the burglary would have been increased by one level if reclassified.

The House bill also would have amended 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 amended 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 offense severity level of the theft offenses would have been increased by one level if reclassified.

The House bill also would have required that a person arrested for committing a burglary within a declared state of emergency area not be released before appearing before a committing magistrate at a first-appearance hearing.<sup>3</sup>

#### **Governor's veto of HB 207**

The Governor vetoed HB 207. The Governor's reasons for vetoing the bill, as expressed in his veto message, were as follows:

I am vetoing the bill because I am concerned that the scope of the bill is overly broad. The enhanced penalties would have application beyond just looting<sup>4</sup> in the days following a disaster. House Bill 207, as worded, would increase burglary and theft penalties at any time a state of emergency exists anywhere in the state. The consequences of this wording are sweeping, considering that states of emergency can last for months following a disaster. To this day, for example -- almost eight months after last summer's hurricanes ceased -- the State of Florida continues under a limited state of emergency (see Executive Order 05-103). Although this bill is well intended, it creates a significant unintended consequence, therefore: enhanced penalties for looting would carry on long beyond the existence of a disaster-induced "looting" scenario.

For this reason, I withhold my approval of House Bill 207, and do hereby veto the same.<sup>5</sup>

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<sup>2</sup> Under s. 775.082, F.S., the maximum penalty for a first degree felony is generally 30-years imprisonment.

<sup>3</sup> Rule 3.130, Florida Rules of Criminal Procedure, address first appearance hearings. It provides, in part, that "[e]xcept when previously released in a lawful manner, every arrested person shall be taken before a judicial officer, either in person or by electronic audiovisual device in the discretion of the court, within 24 hours of arrest."

<sup>4</sup> Looting is not a statutory term nor is it a crime *per se*. Looting is a word that is descriptive of crimes such as burglary and theft that occur during a riot or civil emergency. Florida law currently punishes burglary and theft without regard to whether such crimes occur during a riot or civil emergency.

<sup>5</sup> Governor's Veto Message (letter from Governor Jeb Bush to Secretary of State Glenda Hood, dated June 2, 2005).

### III. Effect of Proposed Changes:

The bill amends s. 810.02, F.S. (burglary), and s. 812.014, F.S. (theft), to reclassify the felony degree of certain burglary and theft offenses if any of them were committed within a county that is subject to a state of emergency declared by the Governor under ch. 252, F.S., after the declaration of emergency is made, and the perpetration of the offense was facilitated by conditions arising from the emergency. The term “conditions arising from the emergency” means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

The offense severity ranking level of the burglary and theft offenses is increased by one level if the offenses are reclassified.

The reclassification of the felony degree of these offenses and the increase in ranking level is as follows:

- *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* (s. 810.02(3)(a)-(b), F.S.): Reclassified from a second degree felony (maximum penalty of 15-years imprisonment) ranked in Level 7<sup>6</sup> to a first degree felony (maximum penalty of 30-years imprisonment) ranked in 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.): Reclassified from a second degree felony ranked in Level 6 to a first degree felony ranked in Level 7.
- *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.): Reclassified from a second degree felony ranked in Level 7 to a first degree felony ranked in 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.): Reclassified from a third degree felony (maximum penalty of 5-years imprisonment) to a second degree felony ranked in 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.): Reclassified from a third degree felony ranked in Level 4 to a second degree felony ranked in Level 5.

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<sup>6</sup> A Level 7 ranking for an offense will score a prison sentence as the lowest permissible sentence whether the defendant who commits this offense is a repeat offender or a first-time offender, unless the sentencing court reduces the sentence to a non-prison sanction on the basis of a permissible mitigating factor.

- *Theft of property valued at \$20,000 or more, but less than \$100,000* (s. 812.014(2)(b)1., F.S.): Reclassified from a second degree felony ranked in Level 6 to a first degree felony ranked in Level 7.
- *Theft of cargo that has entered the stream of commerce and is valued at less than \$50,000* (s. 812.014(2)(b)2., F.S.): Reclassified from a second degree felony ranked in Level 7 to a first degree felony ranked in Level 8.
- *Theft of certain emergency medical equipment valued in excess of \$300* (s. 812.014(2)(b)3., F.S.): Reclassified from a second degree felony ranked in Level 7 to a first degree felony ranked in Level 8.
- *Theft of property valued at \$10,000 or more, but less than \$20,000* (s. 812.014(2)(c)3., F.S.): Reclassified from a third degree felony ranked in Level 4 to a second degree felony ranked in Level 5.
- *Theft of property valued at \$5,000 or more, but less than \$10,000* (s. 812.014(2)(c)2., F.S.): Reclassified from a third degree felony ranked in Level 3 to a second degree felony ranked in Level 4.

The bill responds to the Governor's concern that "enhanced penalties for looting" in the vetoed HB 207 "would carry on long beyond the existence of a disaster-induced 'looting' scenario" by limiting the application of felony reclassification and ranking enhancement provisions to burglaries and thefts that occur during a declared state of emergency and that are "facilitated by conditions arising from the emergency." Such "conditions" are limited to "civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel."

The bill also provides that a person arrested for committing any of these offenses within a county that is subject to such a state of emergency may not be released until the person appears before a committing magistrate at a first-appearance hearing.

The bill takes effect on July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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, the bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### **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 (CJIC) has temporarily postponed consideration of the bill. An estimate of the potential prison bed impact, if any, of the bill was not available at the time this analysis was completed. The Department of Corrections has estimated that the bill has an indeterminable prison bed impact. However, the CJIC estimate is the official estimate for the purpose of determining the estimated prison bed impact of legislation.

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

**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 introducer or the Florida Senate.

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