

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 2014

INTRODUCER: Senator Wise

SUBJECT: Theft/Stolen Motor Vehicle

DATE: March 15, 2006

REVISED: _____

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

I. Summary:

Senate Bill 2014 creates a permissive inference that a person possessing a stolen motor vehicle knew or should have known the vehicle was stolen. Specifically, for purposes of proving theft or dealing in stolen property, proof that a person possesses a stolen motor vehicle and that the ignition mechanism of the vehicle has been bypassed or the locking mechanism of the steering wheel of the vehicle has been broken or bypassed gives rise to an inference that the person possessing the vehicle knew or should have known that it was stolen.

This bill substantially amends section 812.022 of the Florida Statutes.

II. Present Situation:

Theft of a motor vehicle is proscribed in s. 812.014(1)(c)6., F.S. (an offense commonly referred to as “grand theft auto”). Theft of a motor vehicle is a third degree felony. The maximum penalty for a third degree felony is 5 years-imprisonment.¹

Dealing in stolen property is proscribed in s. 812.019, F.S. It is a second degree felony for any person to traffic in, or endeavor to traffic in, property the person knows or should know was stolen.² The maximum penalty for a second degree felony is 15-years imprisonment.³

It is a first degree felony for any person to initiate, organize, plan, finance, direct, manage, or supervise the theft of property and traffic in that stolen property.⁴ Unless a statute specifically

¹ s. 775.082, F.S.

² s. 812.019(2), F.S.

³ See note 1.

provides for the penalty of a term of years not exceeding life, which this statute does not, the maximum penalty for a first degree felony is 30-years imprisonment.⁵

Section 812.022, F.S., provides for several “permissive inferences” relevant to theft and dealing in stolen property. For example, s. 812.022(5), F.S., provides that proof that a dealer who regularly deals in used property possesses stolen property upon which a name and phone number of a person other than the offeror are conspicuously displayed gives rise to an inference that the dealer possessing the property knew or should have known that the property is stolen. The section provides some exceptions from application of this permissive inference (and only this permissive inference), such as a dealer who implements, in a continuous and consistent manner, a program for identification and return of stolen property that meets specified criteria in the section.

A “permissive inference” *allows*, but does not require, the trier of fact to infer an elemental fact upon proof of a basic fact and places no burden of proof on the defendant.⁶ A permissive inference *suggests to the jury a possible conclusion* to be drawn if the State proves predicate facts, but *does not require* the jury to draw that conclusion.⁷

Permissive inferences are constitutionally permissible. They do not shift the State’s burden of proving beyond a reasonable doubt the elements of a crime. In contrast, a mandatory presumption is constitutionally impermissible. A mandatory presumption instructs the jury (the “fact-finder” in a trial) that it *must* infer the presumed fact if the State proves certain predicate facts.⁸ A mandatory rebuttable presumption requires the jury to find the presumed element once the State has proven the predicate facts giving rise to the presumption, unless the defendant persuades the jury that such a finding is unwarranted.⁹ Mandatory presumptions violate the Due Process Clause if they relieve the State of its burden of proof on an element of the offense being tried.¹⁰

III. Effect of Proposed Changes:

Senate Bill 2014 creates a permissive inference that a person possessing a stolen motor vehicle knew or should have known the vehicle was stolen. Specifically, for purposes of proving theft or dealing in stolen property, proof that a person possesses a stolen motor vehicle and that the ignition mechanism of the vehicle has been bypassed or the locking mechanism of the steering wheel of the vehicle has been broken or bypassed gives rise to an inference that the person possessing the vehicle knew or should have known that it was stolen.

The inference is “permissive” because if the State proves the person possesses a vehicle, the vehicle is stolen, and the ignition mechanism of the vehicle has been bypassed or the locking mechanism of the steering wheel of the vehicle has been broken or bypassed, the inference

⁴ s. 812.019(2), F.S.

⁵ See Note 1.

⁶ *Marcolini v. State*, 673 So.2d 3 (Fla. 1996).

⁷ *Id.*

⁸ *Francis v. Franklin*, 471 U.S. 307, 314 n.2 (1985).

⁹ *Id.*

¹⁰ *Francis, supra*, at 314; *State v. Brake*, 796 So.2d 522 (Fla. 2001).

suggests to the jury a possible conclusion to be drawn from these predicate facts, which is that the person possessing such vehicle knew or should have known that it was stolen. However, the inference does not require the jury to draw this conclusion.

The bill takes effect on October 1, 2006.

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:

An analysis by the Criminal Justice Impact Conference of the prison bed impact of this bill, if any, was not available at the time this analysis was completed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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