

# 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: Judiciary Committee

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BILL: CS/SB 2014

INTRODUCER: Judiciary Committee and Senator Wise

SUBJECT: Theft/Stolen Motor Vehicle

DATE: April 27, 2006

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

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

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## I. Summary:

The bill 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, unless satisfactorily explained, 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, Florida Statutes.

## II. Present Situation:

Theft of a motor vehicle, commonly referred to as “grand theft auto,” is proscribed in s. 812.014(2)(c)6., F.S. Theft of a motor vehicle is a third-degree felony. The maximum penalty for a third degree felony is 5 years-imprisonment.<sup>1</sup>

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.<sup>2</sup> The maximum penalty for a second-degree felony is 15-years imprisonment.<sup>3</sup>

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.<sup>4</sup> Unless a statute specifically

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<sup>1</sup> s. 775.082(3)(d), F.S.

<sup>2</sup> s. 812.019(2), F.S.

<sup>3</sup> s. 775.082(3)(c), F.S.

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.<sup>5</sup>

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 which 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

The court has considered whether the inference relating to proof of possession of recently stolen property violated a defendant’s due process rights.<sup>11</sup> The court held that “[s]ince there is a rational connection between the fact proven (the defendant possessed stolen goods) and the fact presumed (the defendant knew the goods were stolen), the inference created by section 812.022(2) does not violate [a defendant’s] due process rights.”<sup>12</sup>

### III. Effect of Proposed Changes:

This bill creates a permissive inference that a person possessing a stolen motor vehicle knew or should have known the vehicle was stolen. Specifically, 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, unless

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<sup>4</sup> s. 812.019(2), F.S.

<sup>5</sup> s. 775.082(3)(b), F.S.

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

<sup>7</sup> *Francis v. Franklin*, 471 U.S. 307, 314 (1985).

<sup>8</sup> *Id.* at 314, n.2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 314

<sup>11</sup> *Edwards v. State*, 381 So.2d 696 (Fla. 1980).

<sup>12</sup> *Id.* at 697. *See also*, *Walker v. State*, 896 So.2d 712 (Fla. 2005).

satisfactorily explained, 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 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.

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

None.

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