

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 (PCB CRJU 06-02) Stolen Property
SPONSOR(S): Criminal Justice Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
1) Criminal Justice Appropriations Committee	4 Y, 0 N	DeBeaugrine	DeBeaugrine
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 7021 provides that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – The bill provides that certain evidence creates an inference of proof relating to theft of a motor vehicle.

B. EFFECT OF PROPOSED CHANGES:

Theft → Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

1. Deprive the other person of a right to the property or a benefit from the property, or
2. Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.¹

Section 812.014, F.S., provides in part that, except as provided for in s. 812.014(2)(a), F.S.,² it is grand theft of the third degree and a third degree felony if the property stolen is a motor vehicle.

Dealing in Stolen Property → Section 812.019, F.S., provides that any person who traffics³ in, or endeavors to traffic in, property that he or she knows or should know was stolen commits a second degree felony. Any person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property commits a first degree felony.

An offender can be charged, when appropriate, with theft and dealing in stolen property in connection with the same property but cannot be convicted of both offenses.⁴

Inferences → Section 812.022, F.S. provides several inferences relating to evidence of theft or dealing in stolen property such as:

- Except as provided in s. 812.022(5), F.S., proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.
- Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily

¹ Section 812.012, F.S. contains definitions of the terms “obtains or uses”, “property”. The section also defines the term “property of another” to mean “property in which a person has an interest upon which another person is not privileged to infringe without consent, whether or not the other person also has an interest in the property.”

² Section 812.014(2)(a), F.S., provides that an offender commits grand theft of the first degree and a first degree felony if:

1. the property stolen is valued at \$100,000 or more; or
2. the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
3. the offender commits any grand theft and:
 - a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or
 - b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000.

³ Section 812.012(8), F.S. contains a definition of the term “traffic”.

⁴ s. 812.025, F.S.

explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

In *Edwards v. State*, 381 So.2d 696 (Fla. 1980), the court considered whether the inference relating to proof of possession of recently stolen property violated a defendant's due process rights. 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." See also, *Walker v. State*, 896 So.2d 712 (Fla. 2005).

Effect of HB 7021 → HB 7021 amends section 812.022, F.S. to provide that proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

C. SECTION DIRECTORY:

Section 1. Amends s. 812.022, F.S., to create an inference relating to stolen vehicles.

Section 2. This acts takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES