

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Criminal Acts Committed During a State of Emergency
SPONSOR(S): Benson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Ferguson	Kramer
2) Domestic Security Committee			
3) Criminal Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. This bill defines the term "conditions arising from the emergency." This bill also provides that a person arrested for committing such an offense may not be released until they appear before a committing magistrate at a first-appearance hearing.

This bill provides an effect date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases criminal penalties for certain acts committed during a state of emergency.

Promote personal responsibility -- This bill seeks to deter wrongful conduct by increasing criminal penalties for certain acts committed after a state of emergency.

B. EFFECT OF PROPOSED CHANGES:

Background

Looting is a common term that applies to crimes such as burglary and theft that occur during a riot or civil emergency. Florida law does not have a separate crime for looting. Looting crimes are prosecuted under criminal laws prohibiting burglary¹ and theft.²

Chapter 252 regulates the Governor's powers and duties during an emergency. Section 252.36(2), F.S., provides that the Governor must issue an executive order or proclamation if an emergency has occurred or is imminent. The Governor's powers during an emergency are broad.

The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; the injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. Offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. The points are added in order to determine the "lowest permissible sentence" for the offense. This is the minimum sentence that a judge may impose. The permissible sentence for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is thirty years, for a second degree felony is fifteen years and for a third degree felony is five years. s. 775.082, F.S.

2005 Legislative Actions

HB 207 was introduced in 2005 and passed favorably through the House and Senate. HB 207 increased criminal penalties for burglary and theft acts committed within an area that is subject to a state of emergency. However, HB 207 was vetoed on June 2, 2005³ because of concerns with the scope of the bill being overly broad. As the Governor explained in his veto message:

The enhanced penalties would have application beyond just looting in the days following a disaster. The consequences of this wording are sweeping, considering that states of emergency can last for months following a disaster. 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.

Effect of Bill

¹ Section 810.02, F.S.

² Section 812.014, F.S.

³ See http://eogtmp.sto.fl.gov/html/2005_legislative_actions.html

This bill increases the penalties for burglary and theft when the offender commits such crimes after a state of emergency is declared by the Governor, such crimes are committed within the county subject to the state of emergency, and the perpetration of such crimes are facilitated by conditions arising from the emergency. The term “conditions arising from the emergency”, as defined by this bill, means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or the response time for first responders or homeland security personnel.

This bill appears to address the concerns of the veto message for HB 207 since it narrows the scope to burglary and theft offenses committed after a state of emergency is declared, within the county subject to the state of emergency, and only when the commission of the offense is facilitated by conditions arising from the emergency as defined by the bill.

This bill also requires that a person arrested for burglary or theft during a state of emergency must be held until the person appears before a committing magistrate at a first appearance hearing pursuant to rule 3.130 Crim. Pro.

The following chart summarizes all of the offenses reclassified by this bill and the increased ranking:

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
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. ss. 810.02(3)(a)-(b), F.S.	2nd degree felony, Level 7	1st degree felony, 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.	2nd degree felony, Level 6	1st degree felony, 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.	2nd degree felony, Level 7	1st degree felony, 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.	3rd degree felony, Level 4	2nd degree felony, 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.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$20,000 and \$100,000. s. 812.014(2)(b)1., F.S.	2nd degree felony, Level 6	1st degree felony, Level 7
Theft of cargo that has entered the stream of commerce and is valued less than \$50,000. s. 812.014(2)(b)2., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of certain emergency medical equipment valued in excess of \$300. s. 812.014(2)(b)3., F.S.	2nd degree felony, Level 7	1st degree felony, Level 8
Theft of property valued between \$10,000 and \$20,000. s. 812.014(2)(c)3., F.S.	3rd degree felony, Level 4	2nd degree felony, Level 5
Theft of property valued between \$5,000 and \$10,000. s. 812.014(2)(c)2., F.S.	3rd degree felony, Level 3	2nd degree felony, Level 4

C. SECTION DIRECTORY:

Section 1 amends s. 810.02, F.S., reclassifying certain burglary offenses committed during a state of emergency.

Section 2 amends s. 812.014, F.S., reclassifying certain theft offenses committed during a state of emergency.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Estimating Conference (CJEC) met February 28, 2006 to determine the fiscal impact of this bill; however, the consideration of the bill was temporarily postponed in order to collect additional data.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES