

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:

Burglary

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 - After permission to remain therein has been withdrawn, with the intent to commit an offense therein; or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.

Burglary is a second degree felony¹, punishable by up to fifteen years in prison,² 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.

Burglary is a third degree felony,³ punishable by up to five years in prison⁴ 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.

¹ s. 810.02(3), F.S

² s. 775.082(3)(c), F.S

³ s. 810.02(4)

⁴ s. 775.082(3)(d), F.S.

Grand theft

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 that can be imposed for the offense.

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(2), 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 for 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. Section 501.160(3), F.S., provides that it is likewise a violation of s. 501.204, F.S., for any person to impose unconscionable prices for lease or rental of a dwelling or storage unit during a declared state of emergency. These prohibitions remain 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. The House bill would have reclassified the felony degree of burglary and theft offenses contained in that subsection burglary or theft 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 or theft offense would have been increased by one level if reclassified.

The 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.⁵

⁵ 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.”

Governor Bush 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 looting⁶ 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.⁷

Provisions of HB 449

Burglary/theft during state of emergency: 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" is defined to mean 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 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

⁶ 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.

⁷ Governor's Veto Message (letter from Governor Jeb Bush to Secretary of State Glenda Hood, dated June 2, 2005).

Looting Offenses		Reclassification if committed during a state of emergency
Description of Offense	Current Penalty	
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

The bill responds to concern's expressed in Governor Bush's veto message for HB 207 that enhanced penalties for looting "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.

Theft of law enforcement equipment taken from authorized emergency vehicle: The bill also increases the severity of a theft offense if the property stolen is law enforcement equipment valued at \$300 or more that is taken from an authorized emergency vehicle, as defined in s. 316.003, F.S. The term law enforcement equipment is defined to mean any property, device, or apparatus used by any law enforcement officer as defined in s. 943.10 in their official business. The offense will be a second degree felony and will be ranked in level 7 of the offense severity ranking chart. This will be treated in the same manner as theft of emergency medical equipment valued at \$300 or more that is taken from a medical facility, vehicle or aircraft.

Burglary of authorized emergency vehicle: The bill also increased the severity of a burglary offense when the person enters or remains in an authorized emergency vehicle. This offense will be a second degree felony and will be treated in the same manner as a burglary offense where the offender enters or remains in an occupied conveyance. The offense will be ranked in level 7 of the offense severity ranking chart.

C. SECTION DIRECTORY:

Section 1. Amends s. 810.02, F.S. relating to burglary.

Section 2. Amends s. 812.014, F.S. relating to theft.

Section 3. Amends s. 921.0022, F.S. relating to offense severity ranking chart of Criminal Punishment Code.

Section 4. Provides effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 16, 2007, the Criminal Justice Impact Conference classified the prison bed impact of this bill as originally filed as indeterminate. It is not possible to predict the number and duration of declarations of state of emergencies that will occur in the future. The conference has not met to consider the impact of the provisions relating to burglary from an authorized emergency vehicle and theft of law enforcement equipment.

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:

See above.

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:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This bill, if enacted, will protect property owners during a most vulnerable time following a natural disaster, such as a hurricane or tornado. It provides law enforcement a much needed tool in protecting personal property left exposed after disasters.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Homeland Security and Public Safety Committee adopted an amendment which increased the severity of a theft offense if the property stolen is law enforcement equipment valued at \$300 or more that is taken from an authorized emergency vehicle, as defined in s. 316.003, F.S. The offense will be a second degree felony and will be ranked in level 7 of the offense severity ranking chart.

The amendment also increased the severity of a burglary offense when the person enters or remains in an authorized emergency vehicle. This offense will be a second degree felony and will be treated in the same manner as a burglary offense where the offender enters or remains in an occupied conveyance.

On March 21, 2007, the Safety & Security Council reported the bill favorably with a council substitute. This analysis is drafted to the council substitute.