



154870

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2009	.	
	.	
	.	
	.	

The Committee on Criminal Justice (King) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 812.014, Florida Statutes is amended, and paragraphs (e) and (f) are added to subsection (3) of that section, to read:

812.014 Theft.—

(2)(a)1. If the property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or



154870

12 2. If the property stolen is cargo valued at \$50,000 or
13 more that has entered the stream of interstate or intrastate
14 commerce from the shipper's loading platform to the consignee's
15 receiving dock; or

16 3. If the offender commits any grand theft and:

17 a. In the course of committing the offense the offender
18 uses a motor vehicle as an instrumentality, other than merely as
19 a getaway vehicle, to assist in committing the offense and
20 thereby damages the real property of another; or

21 b. In the course of committing the offense the offender
22 causes damage to the real or personal property of another in
23 excess of \$1,000,

24
25 the offender commits grand theft in the first degree, punishable
26 as a felony of the first degree, as provided in s. 775.082, s.
27 775.083, or s. 775.084.

28 (b)1. If the property stolen is valued at \$20,000 or more,
29 but less than \$100,000;

30 2. The property stolen is cargo valued at less than \$50,000
31 that has entered the stream of interstate or intrastate commerce
32 from the shipper's loading platform to the consignee's receiving
33 dock;

34 3. The property stolen is emergency medical equipment,
35 valued at \$600 ~~\$300~~ or more, that is taken from a facility
36 licensed under chapter 395 or from an aircraft or vehicle
37 permitted under chapter 401; or

38 4. The property stolen is law enforcement equipment, valued
39 at \$600 ~~\$300~~ or more, that is taken from an authorized emergency
40 vehicle, as defined in s. 316.003,



154870

41
42 the offender commits grand theft in the second degree,
43 punishable as a felony of the second degree, as provided in s.
44 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
45 means mechanical or electronic apparatus used to provide
46 emergency services and care as defined in s. 395.002(9) or to
47 treat medical emergencies. Law enforcement equipment means any
48 property, device, or apparatus used by any law enforcement
49 officer as defined in s. 943.10 in the officer's official
50 business. However, if the property is stolen within a county
51 that is subject to a state of emergency declared by the Governor
52 under chapter 252, the theft is committed after the declaration
53 of emergency is made, and the perpetration of the theft is
54 facilitated by conditions arising from the emergency, the theft
55 is a felony of the first degree, punishable as provided in s.
56 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
57 the term "conditions arising from the emergency" means civil
58 unrest, power outages, curfews, voluntary or mandatory
59 evacuations, or a reduction in the presence of or response time
60 for first responders or homeland security personnel. For
61 purposes of sentencing under chapter 921, a felony offense that
62 is reclassified under this paragraph is ranked one level above
63 the ranking under s. 921.0022 or s. 921.0023 of the offense
64 committed.

65 (c) It is grand theft of the third degree and a felony of
66 the third degree, punishable as provided in s. 775.082, s.
67 775.083, or s. 775.084, if the property stolen is:

- 68 1. Valued at \$600 ~~\$300~~ or more, but less than \$5,000.
69 2. Valued at \$5,000 or more, but less than \$10,000.



154870

70 3. Valued at \$10,000 or more, but less than \$20,000.

71 4. A will, codicil, or other testamentary instrument.

72 5. A firearm.

73 6. A motor vehicle, except as provided in paragraph (a).

74 7. Any commercially farmed animal, including any animal of
75 the equine, bovine, or swine class, or other grazing animal, and
76 including aquaculture species raised at a certified aquaculture
77 facility. If the property stolen is aquaculture species raised
78 at a certified aquaculture facility, then a \$10,000 fine shall
79 be imposed.

80 8. Any fire extinguisher.

81 9. Any amount of citrus fruit consisting of 2,000 or more
82 individual pieces of fruit.

83 10. Taken from a designated construction site identified by
84 the posting of a sign as provided for in s. 810.09(2)(d).

85 11. Any stop sign.

86 12. Anhydrous ammonia.

87
88 However, if the property is stolen within a county that is
89 subject to a state of emergency declared by the Governor under
90 chapter 252, the property is stolen after the declaration of
91 emergency is made, and the perpetration of the theft is
92 facilitated by conditions arising from the emergency, the
93 offender commits a felony of the second degree, punishable as
94 provided in s. 775.082, s. 775.083, or s. 775.084, if the
95 property is valued at \$5,000 or more, but less than \$10,000, as
96 provided under subparagraph 2., or if the property is valued at
97 \$10,000 or more, but less than \$20,000, as provided under
98 subparagraph 3. As used in this paragraph, the term "conditions



154870

99 arising from the emergency" means civil unrest, power outages,
100 curfews, voluntary or mandatory evacuations, or a reduction in
101 the presence of or the response time for first responders or
102 homeland security personnel. For purposes of sentencing under
103 chapter 921, a felony offense that is reclassified under this
104 paragraph is ranked one level above the ranking under s.
105 921.0022 or s. 921.0023 of the offense committed.

106 (d) It is grand theft of the third degree and a felony of
107 the third degree, punishable as provided in s. 775.082, s.
108 775.083, or s. 775.084, if the property stolen is valued at \$300
109 ~~\$100~~ or more, but less than \$600 ~~\$300~~, and is taken from a
110 dwelling as defined in s. 810.011(2) or from the unenclosed
111 curtilage of a dwelling pursuant to s. 810.09(1).

112 (e) Except as provided in paragraph (d), if the property
113 stolen is valued at \$100 or more, but less than \$600 ~~\$300~~, the
114 offender commits petit theft of the first degree, punishable as
115 a misdemeanor of the first degree, as provided in s. 775.082 or
116 s. 775.083.

117 (3)

118 (e) If a law enforcement officer has probable cause to
119 believe that a defendant has committed retail theft as defined
120 in s. 812.015(1), the officer may issue a notice to appear in
121 lieu of arresting the defendant if the aggregate value of the
122 merchandise stolen is less than \$600 and the defendant has no
123 previous criminal convictions or juvenile adjudications. The
124 officer may, under his or her lawful authority, detain the
125 defendant until such time as the defendant's identity and
126 criminal or juvenile history have been provided to the officer
127 for purposes of making an informed decision regarding issuing



154870

128 the notice to appear in lieu of arrest.

129 (f) A state attorney may establish a retail-theft diversion
130 program in the state attorney's office or by using an
131 independent contractor for the purpose of diverting from
132 prosecution defendants who meet the criteria set forth in
133 paragraph (e). However, establishing and operating a diversion
134 program does not affect the authority of the state attorney to
135 prosecute any defendant for committing retail theft.

136 1. Upon receipt of a complaint or notice to appear alleging
137 the crime of retail theft, a state attorney who operates a
138 retail-theft diversion program shall determine whether the
139 defendant is appropriate for referral to the retail-theft
140 diversion program. In making such determination, the state
141 attorney shall consider:

- 142 a. The value of the merchandise stolen in the retail theft;
143 b. The existence of other pending complaints or criminal
144 charges against the defendant;
145 c. The strength of the evidence of the retail theft; and
146 d. Victim input.

147 2. Upon referral of the defendant to the retail-theft
148 diversion program, the state attorney shall mail a copy of the
149 notice to appear to the defendant. The notice must contain all
150 of the following:

151 a. The date and location of the alleged retail-theft
152 offense.

153 b. The date before which the defendant must contact the
154 retail-theft diversion program office concerning the notice to
155 appear.

156 c. A statement of the maximum penalty for the retail-theft



154870

157 offense.

158 3. If the state attorney permits the defendant to enter the
159 retail-theft diversion program, the state attorney shall enter
160 into a written agreement with the defendant to divert him or her
161 from prosecution for retail theft. The diversion agreement must
162 include all of the following conditions, which must be accepted
163 by the defendant:

164 a. Attendance and proof of completion of a program designed
165 to assist, educate, and prevent future unlawful conduct by the
166 defendant;

167 b. Full restitution, if any is established, of the value of
168 the retail theft;

169 c. Full payment of fees due under subparagraph 5.; and

170 d. A knowing and intelligent waiver of the defendant's
171 right to a speedy trial for the period of his or her diversion.

172 4. Any defendant who does not fulfill all conditions in the
173 diversion program may be prosecuted for the crime of retail
174 theft.

175 5. To fund the retail-theft diversion program, the state
176 attorney may collect a fee from each participating defendant.
177 The fee for each defendant may not exceed:

178 a. Twenty-five dollars, if the value of the stolen
179 merchandise does not exceed \$50.

180 b. Thirty dollars, if the value of the stolen merchandise
181 is more than \$50 but does not exceed \$100.

182 c. Forty dollars, if the value of the stolen merchandise is
183 more than \$100 but does not exceed \$600.

184 Section 2. Subsection (8) of section 812.015, Florida
185 Statutes is amended to read:



154870

186 812.015 Retail and farm theft; transit fare evasion;
187 mandatory fine; alternative punishment; detention and arrest;
188 exemption from liability for false arrest; resisting arrest;
189 penalties.—

190 (8) Except as provided in subsection (9), a person who
191 commits retail theft commits a felony of the third degree,
192 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
193 if the property stolen is valued at \$600 ~~\$300~~ or more, and the
194 person:

195 (a) Individually, or in concert with one or more other
196 persons, coordinates the activities of one or more individuals
197 in committing the offense, in which case the amount of each
198 individual theft is aggregated to determine the value of the
199 property stolen;

200 (b) Commits theft from more than one location within a 48-
201 hour period, in which case the amount of each individual theft
202 is aggregated to determine the value of the property stolen;

203 (c) Acts in concert with one or more other individuals
204 within one or more establishments to distract the merchant,
205 merchant's employee, or law enforcement officer in order to
206 carry out the offense, or acts in other ways to coordinate
207 efforts to carry out the offense; or

208 (d) Commits the offense through the purchase of merchandise
209 in a package or box that contains merchandise other than, or in
210 addition to, the merchandise purported to be contained in the
211 package or box.

212 Section 3. This act shall take effect October 1, 2009.

213
214



154870

215 ===== T I T L E A M E N D M E N T =====

216 And the title is amended as follows:

217 Delete everything before the enacting clause

218 and insert:

219 A bill to be entitled

220 An act relating to theft; amending s. 812.014, F.S.;

221 increasing the minimum amount of value attributed to

222 certain emergency medical equipment and law

223 enforcement equipment for the theft to reach the

224 threshold for a second degree felony; increasing the

225 minimum value attributed to certain property for the

226 theft to reach the threshold for a third degree

227 felony; requiring a law enforcement officer who has

228 probable cause to believe that a defendant has

229 committed retail theft to issue a notice to appear in

230 lieu of arresting the defendant under certain

231 circumstances; authorizing a state attorney to

232 establish a retail-theft diversion program for the

233 purpose of diverting defendants from criminal

234 prosecution if the defendant meets certain criteria;

235 providing eligibility criteria for participating in a

236 retail-theft diversion program; requiring the state

237 attorney to mail a notice to appear to a defendant

238 upon referral to a diversion program; setting forth

239 the conditions that each participant in the retail-

240 theft diversion program must complete; providing that

241 a defendant may be prosecuted for the retail theft if

242 all conditions in the diversion program are not

243 fulfilled; authorizing a state attorney to collect a



154870

244 fee from each participant in the program; setting a
245 limit on the fee for each defendant; amending s.
246 812.015, F.S.; increasing the value attributed to
247 property taken during the commission of retail theft
248 to reach the threshold amount for a third degree
249 felony offense; providing an effective date.