

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1548

INTRODUCER: Criminal Justice Committee and Senator Joyner

SUBJECT: Retail-Theft Diversion Programs

DATE: March 18, 2009      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.			CM	
3.			JA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill amends the general theft statute and the retail theft statute to elevate the minimum property value threshold for charging a person with a felony grand theft to \$600 from the current \$300.

The bill reinforces law enforcement officers' discretion to issue a notice to appear to a misdemeanor defendant, rather than arresting him or her, in certain limited cases of retail theft. The bill also allows state attorney's offices to create and utilize a retail-theft diversion program for defendants who meet the criteria set forth in the bill.

This bill substantially amends sections 812.014 and 812.015 of the Florida Statutes.

**II. Present Situation:**

**Theft**

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the

property taken by the defendant, the defendant's history of theft convictions and, in some cases, the type of property taken. The elements of a theft offense are set forth as follows:

(1) 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:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property. *s. 812.014(1), F.S.*

The statutory designations of misdemeanor (also called petit theft) or felony (grand) theft offenses are reclassified or the penalties are enhanced under certain conditions such as an existing state of emergency at the time of the offense or if cargo, emergency medical equipment or law enforcement equipment are taken, but the general designations are:

- 2<sup>nd</sup> degree misdemeanor petit theft
  - Property value less than \$100 *and*
  - No prior convictions for any theft offense
- 1<sup>st</sup> degree misdemeanor petit theft
  - Property value \$100 or more but less than \$300 *or*
  - Prior conviction for theft, regardless of the property value of the current theft offense
- 3<sup>rd</sup> degree felony grand theft
  - Property value \$300 or more but less than \$20,000 regardless of prior theft convictions *or* the property is
    - A will, codicil, or other testamentary instrument.
    - A firearm.
    - A motor vehicle, except as provided in paragraph (a).
    - 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. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.
    - 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).
    - Any stop sign.
    - Anhydrous ammonia.
  - Property value \$100 or more but less than \$300 taken from a dwelling or curtilage thereof
- 2<sup>nd</sup> degree felony grand theft
  - Property value \$20,000 or more but less than \$100,000, regardless of prior theft convictions
- 1<sup>st</sup> degree felony grand theft
  - Property value \$100,000 or more, regardless of prior theft convictions.

It should be noted that the last time the Legislature increased the threshold property values for grand theft was in 1986. At that time, the value was increased from \$100 to \$300. *Ch. 86-161*

*s. I, L.O.F.* If the \$300 had been increased each year since 1986 by the change in the Consumer Price Index to account for inflation, the \$300 property value figure would currently be \$589. *Source: U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C.*

### **Retail Theft**

Section 812.015(1)(d), F.S., defines retail theft as the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value. Theft that can be defined as retail theft is subject to the designations and penalties outlined above, however in cases of a second or subsequent conviction of theft from a merchant the court must impose a fine of not less than \$50 nor more than \$1,000. The court may require that the defendant perform public service in lieu of paying the fine. *s. 812.015(2)F.S.* As a practical matter, cases of simple retail theft are generally misdemeanor offenses. The statute does designate certain acts as felonies, however, such as use of an antishoplifting device countermeasure or acting in concert with others to commit the theft. *s. 812.015(7) and (8), F.S.*

### **Notice to Appear**

A notice to appear is a written order issued by a law enforcement officer, in lieu of physical arrest, that requires a defendant to appear in a designated court on a specific date and time. When a person is arrested for a misdemeanor or a local ordinance, the officer may elect to issue the notice to appear unless:

- the accused fails or refuses to sufficiently identify himself or herself or supply the required information;
- the accused refuses to sign the notice to appear;
- the officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
- the accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;
- the officer has any suspicion that the accused may be wanted in any jurisdiction; or
- it appears that the accused previously has failed to respond to a notice or a summons or has violated the conditions of any pretrial release program. *Fla.R.Crim.P. Rule 3.125*

Even if the officer who makes the arrest does not issue a notice to appear, the booking officer at the local jail has that option available if he or she determines there is a likelihood that the defendant will appear in court based upon determinations made regarding the defendant's

- residence and length of residence in the community;
- family ties in the community;
- employment record;
- character and mental condition;
- past record of convictions; or
- past history of appearance at court proceedings. *Fla.R.Crim.P. Rule 3.125*

If a defendant willfully fails to appear in court as directed by a notice to appear, he or she may be subject to imprisonment or a fine of up to the maximum on the underlying charge. *s. 901.31, F.S.* The court may also hold the defendant in contempt for failure to appear.

### **Misdemeanor Case Diversion**

It is within the discretion of the state attorneys to enter into what are known as deferred prosecution agreements with defendants. These agreements require the defendant to waive the right to speedy trial in order to allow time to complete the terms of the agreement. Often the terms of the agreement are tailored to the specific offense committed and require community service work, restitution, costs and other provisions. Upon completion of the terms of the agreement, the pending criminal case is disposed of by the state attorney.

State attorneys offices are specifically authorized by law to establish worthless check case diversion programs. Restitution and costs are paid by the worthless check defendant through these programs and they are required to attend a program designed to assist and educate them on the issue of bad check-writing. *s. 832.08, F.S.*

### **III. Effect of Proposed Changes:**

The bill increases the minimum threshold property value for simple third degree felony grand theft from \$300 to \$600 in *s. 812.014(2)(c)(1), F.S.* By virtue of this change, property value for a first degree misdemeanor theft becomes \$100 or more, but less than \$600 in *s. 812.014(2)(e), F.S.*

If a person takes property valued at \$300 or more, but less than \$600, from a dwelling or from the unenclosed curtilage thereof, the offense would constitute a third degree felony grand theft under the provisions of the bill that amend *s. 812.014(2)(d), F.S.* Sections *812.014(2)(b)3. and 4., F.S.,* are amended by the bill to increase the threshold property values from \$300 to \$600, but not alter the second degree felony status of those particular offenses. The same adjustment, increasing the property value from \$300 to \$600, is set forth in *s. 812.015(2)(8), F.S.,* which proscribes certain third degree felony grand thefts in the retail theft context.

In the field, law enforcement officers having developed probable cause, then have the discretion to arrest and transport a misdemeanor defendant to jail or, instead, to issue a notice to appear if the officer is satisfied that the defendant will appear in court on the charges. The bill reinforces and encourages the exercise of the law enforcement officer's discretion to issue a notice to appear in cases where there is probable cause to believe a person has committed retail theft, if the aggregate value of the merchandise stolen is less than \$600 and the defendant has no prior adult or juvenile convictions of any kind.

It would also authorize the state attorneys offices to establish a diversion program for defendants who meet the criteria noted above. In addition to considering the misdemeanor defendant's clean criminal or juvenile record, the state attorney shall also consider the victim's wishes with regard to case diversion as well as the strength of the evidence in the case. The program would require full restitution, payment of fees for the funding of the program, waiver of speedy trial, and completion of a program focused on first-time offenders.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Any first-time offenders who are channeled into a state attorney diversion program authorized by the bill are required to make full restitution to the retail establishment from which they allegedly took merchandise. Therefore, the private sector should not experience any negative fiscal impact under the provisions of the bill.

## C. Government Sector Impact:

There may be some cost savings to local governments if law enforcement officers are not transporting first-time offenders to the local jail. On the other hand, it may require additional time at the scene of the retail theft to establish the identity and prior criminal or juvenile record of the defendant, so the cost savings may be minimal.

Local government may see some positive fiscal impact from not being required to process and house these defendants in the local jail, even if only until First Appearance.

If the state attorneys implement the retail-theft diversion program, it can be predicted that court dockets will see a positive impact, therefore judicial time and resources may be saved.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on March 18, 2009:**

- Increases the threshold property value for a person to be charged with felony grand theft from \$300 or more to \$600 or more in the following sections of law:
  - s. 812.014(2)(c)(1), F.S.
  - s. 812.014(2)(b)3. and 4., F.S.
  - s. 812.015(2)(8), F.S.
- Provides in s. 812.014(2)(d), F.S., that if property valued at more than \$300 but less than \$600 is taken from a dwelling or the unenclosed curtilage thereof, a third degree felony grand theft is committed. The property values in current law are more than \$100, but less than \$300.
- Increases the first degree misdemeanor theft offense's property value threshold from \$100 or more, but less than \$600, in s. 812.014(2)(e), F.S.
- Returns complete discretion to the law enforcement officer investigating a first-time petit (retail) theft, who may elect to issue a notice to appear. The original bill had required it to be issued under certain circumstances.
- Requires the state attorney who is deciding whether to admit a first-time petit theft defendant into the diversion program authorized in the bill to take the victim's wishes into account.

**B. Amendments:**

None.