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1 A bill to be entitled
2 An act relating to theft; amending s. 812.014, F.S.;
3 increasing the minimum value attributed to certain
4 property for the theft to reach the threshold for a
5 third-degree felony; authorizing a law enforcement
6 officer who has probable cause to believe that a
7 defendant has committed retail theft to issue a notice
8 to appear in lieu of arresting the defendant under
9 certain circumstances; authorizing a state attorney to
10 establish a retail-theft diversion program for the
11 purpose of diverting defendants from criminal
12 prosecution if the defendant meets certain criteria;
13 providing eligibility criteria for participating in a
14 retail-theft diversion program; requiring the state
15 attorney to mail a notice to appear to a defendant
16 upon referral to a diversion program; setting forth
17 the conditions that each participant in the retail-
18 theft diversion program must complete; providing that
19 a defendant may be prosecuted for the retail theft if
20 all conditions in the diversion program are not
21 fulfilled; authorizing a state attorney to collect a
22 fee from each participant in the program; setting a
23 limit on the fee for each defendant; amending s.
24 812.015, F.S.; increasing the value attributed to
25 property taken during the commission of retail theft
26 to reach the threshold amount for a third-degree
27 felony offense; amending s. 921.0022, F.S., relating
28 to the offense severity ranking chart of the Criminal
29 Punishment Code; conforming provisions to changes made

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30 by the act; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Subsection (2) of section 812.014, Florida
35 Statutes, is amended, and paragraphs (e) and (f) are added to
36 subsection (3) of that section, to read:

37 812.014 Theft.—

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

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

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

46 a. In the course of committing the offense the offender
47 uses a motor vehicle as an instrumentality, other than merely as
48 a getaway vehicle, to assist in committing the offense and
49 thereby damages the real property of another; or

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

53
54 the offender commits grand theft in the first degree, punishable
55 as a felony of the first degree, as provided in s. 775.082, s.
56 775.083, or s. 775.084.

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

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

63 3. The property stolen is emergency medical equipment,
64 valued at \$300 or more, that is taken from a facility licensed
65 under chapter 395 or from an aircraft or vehicle permitted under
66 chapter 401; or

67 4. The property stolen is law enforcement equipment, valued
68 at \$300 or more, that is taken from an authorized emergency
69 vehicle, as defined in s. 316.003,

70
71 the offender commits grand theft in the second degree,
72 punishable as a felony of the second degree, as provided in s.
73 775.082, s. 775.083, or s. 775.084. Emergency medical equipment
74 means mechanical or electronic apparatus used to provide
75 emergency services and care as defined in s. 395.002(9) or to
76 treat medical emergencies. Law enforcement equipment means any
77 property, device, or apparatus used by any law enforcement
78 officer as defined in s. 943.10 in the officer's official
79 business. However, if the property is stolen within a county
80 that is subject to a state of emergency declared by the Governor
81 under chapter 252, the theft is committed after the declaration
82 of emergency is made, and the perpetration of the theft is
83 facilitated by conditions arising from the emergency, the theft
84 is a felony of the first degree, punishable as provided in s.
85 775.082, s. 775.083, or s. 775.084. As used in this paragraph,
86 the term "conditions arising from the emergency" means civil
87 unrest, power outages, curfews, voluntary or mandatory

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88 evacuations, or a reduction in the presence of or response time
89 for first responders or homeland security personnel. For
90 purposes of sentencing under chapter 921, a felony offense that
91 is reclassified under this paragraph is ranked one level above
92 the ranking under s. 921.0022 or s. 921.0023 of the offense
93 committed.

94 (c) It is grand theft of the third degree and a felony of
95 the third degree, punishable as provided in s. 775.082, s.
96 775.083, or s. 775.084, if the property stolen is:

- 97 1. Valued at \$600 ~~\$300~~ or more, but less than \$5,000.
- 98 2. Valued at \$5,000 or more, but less than \$10,000.
- 99 3. Valued at \$10,000 or more, but less than \$20,000.
- 100 4. A will, codicil, or other testamentary instrument.
- 101 5. A firearm.
- 102 6. A motor vehicle, except as provided in paragraph (a).
- 103 7. Any commercially farmed animal, including any animal of
104 the equine, bovine, or swine class, or other grazing animal, and
105 including aquaculture species raised at a certified aquaculture
106 facility. If the property stolen is aquaculture species raised
107 at a certified aquaculture facility, then a \$10,000 fine shall
108 be imposed.
- 109 8. Any fire extinguisher.
- 110 9. Any amount of citrus fruit consisting of 2,000 or more
111 individual pieces of fruit.
- 112 10. Taken from a designated construction site identified by
113 the posting of a sign as provided for in s. 810.09(2)(d).
- 114 11. Any stop sign.
- 115 12. Anhydrous ammonia.
- 116

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117 However, if the property is stolen within a county that is
118 subject to a state of emergency declared by the Governor under
119 chapter 252, the property is stolen after the declaration of
120 emergency is made, and the perpetration of the theft is
121 facilitated by conditions arising from the emergency, the
122 offender commits a felony of the second degree, punishable as
123 provided in s. 775.082, s. 775.083, or s. 775.084, if the
124 property is valued at \$5,000 or more, but less than \$10,000, as
125 provided under subparagraph 2., or if the property is valued at
126 \$10,000 or more, but less than \$20,000, as provided under
127 subparagraph 3. As used in this paragraph, the term "conditions
128 arising from the emergency" means civil unrest, power outages,
129 curfews, voluntary or mandatory evacuations, or a reduction in
130 the presence of or the response time for first responders or
131 homeland security personnel. For purposes of sentencing under
132 chapter 921, a felony offense that is reclassified under this
133 paragraph is ranked one level above the ranking under s.
134 921.0022 or s. 921.0023 of the offense committed.

135 (d) It is grand theft of the third degree and a felony of
136 the third degree, punishable as provided in s. 775.082, s.
137 775.083, or s. 775.084, if the property stolen is valued at \$300
138 ~~\$100~~ or more, but less than \$600 ~~\$300~~, and is taken from a
139 dwelling as defined in s. 810.011(2) or from the unenclosed
140 curtilage of a dwelling pursuant to s. 810.09(1).

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

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146 (3)

147 (e) If a law enforcement officer has probable cause to
148 believe that a defendant has committed retail theft as defined
149 in s. 812.015(1), the officer may issue a notice to appear in
150 lieu of arresting the defendant if the aggregate value of the
151 merchandise stolen is less than \$600 and the defendant has no
152 previous criminal convictions or juvenile adjudications. The
153 officer may, under his or her lawful authority, detain the
154 defendant until such time as the defendant's identity and
155 criminal or juvenile history have been provided to the officer
156 for purposes of making an informed decision regarding issuing
157 the notice to appear in lieu of arrest.

158 (f) A state attorney may establish a retail-theft diversion
159 program in the state attorney's office or by using an
160 independent contractor for the purpose of diverting from
161 prosecution defendants who meet the criteria set forth in
162 paragraph (e). However, establishing and operating a diversion
163 program does not affect the authority of the state attorney to
164 prosecute any defendant for committing retail theft.

165 1. Upon receipt of a complaint or notice to appear alleging
166 the crime of retail theft, a state attorney who operates a
167 retail-theft diversion program shall determine whether the
168 defendant is appropriate for referral to the retail-theft
169 diversion program. In making such determination, the state
170 attorney shall consider:

- 171 a. The value of the merchandise stolen in the retail theft;
172 b. The existence of other pending complaints or criminal
173 charges against the defendant;
174 c. The strength of the evidence of the retail theft; and

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175 d. Victim input.

176 2. Upon referral of the defendant to the retail-theft
177 diversion program, the state attorney shall mail a copy of the
178 notice to appear to the defendant. The notice must contain all
179 of the following:

180 a. The date and location of the alleged retail-theft
181 offense.

182 b. The date before which the defendant must contact the
183 retail-theft diversion program office concerning the notice to
184 appear.

185 c. A statement of the maximum penalty for the retail-theft
186 offense.

187 3. If the state attorney permits the defendant to enter the
188 retail-theft diversion program, the state attorney shall enter
189 into a written agreement with the defendant to divert him or her
190 from prosecution for retail theft. The diversion agreement must
191 include all of the following conditions, which must be accepted
192 by the defendant:

193 a. Attendance and proof of completion of a program designed
194 to assist, educate, and prevent future unlawful conduct by the
195 defendant;

196 b. Full restitution, if any is established, of the value of
197 the retail theft;

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

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

201 4. Any defendant who does not fulfill all conditions in the
202 diversion program may be prosecuted for the crime of retail
203 theft.

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204 5. To fund the retail-theft diversion program, the state
205 attorney may collect a fee from each participating defendant.
206 The fee for each defendant may not exceed \$250.

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

209 812.015 Retail and farm theft; transit fare evasion;
210 mandatory fine; alternative punishment; detention and arrest;
211 exemption from liability for false arrest; resisting arrest;
212 penalties.—

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

218 (a) Individually, or in concert with one or more other
219 persons, coordinates the activities of one or more individuals
220 in committing the offense, in which case the amount of each
221 individual theft is aggregated to determine the value of the
222 property stolen;

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

226 (c) Acts in concert with one or more other individuals
227 within one or more establishments to distract the merchant,
228 merchant's employee, or law enforcement officer in order to
229 carry out the offense, or acts in other ways to coordinate
230 efforts to carry out the offense; or

231 (d) Commits the offense through the purchase of merchandise
232 in a package or box that contains merchandise other than, or in

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233 addition to, the merchandise purported to be contained in the
234 package or box.

235 Section 3. Paragraphs (b) and (e) of subsection (3) of
236 section 921.0022, Florida Statutes, are amended to read:

237 921.0022 Criminal Punishment Code; offense severity ranking
238 chart.—

239 (3) OFFENSE SEVERITY RANKING CHART

240 (b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431(1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431(1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07	3rd	Registration of securities and furnishing of prospectus required.
590.28(1)	3rd	Willful, malicious, or intentional burning.

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246	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
247	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
248	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
249	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
250	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
251	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; <u>\$600</u> \$300 or more but less than \$5,000.
252	812.014(2)(d)	3rd	Grand theft, 3rd degree; <u>\$300</u> \$100 or more but less than <u>\$600</u> \$300 , taken from unenclosed curtilage of dwelling.
253	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.

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254	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
255	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
256	817.52(3)	3rd	Failure to redeliver hired vehicle.
257	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
258	817.60(5)	3rd	Dealing in credit cards of another.
259	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
260	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
261	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
262	831.01	3rd	Forgery.
263	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.

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264 831.07 3rd Forging bank bills, checks, drafts, or
promissory notes.

265 831.08 3rd Possessing 10 or more forged notes,
bills, checks, or drafts.

266 831.09 3rd Uttering forged notes, bills, checks,
drafts, or promissory notes.

267 831.11 3rd Bringing into the state forged bank
bills, checks, drafts, or notes.

268 832.05(3)(a) 3rd Cashing or depositing item with intent
to defraud.

269 843.08 3rd Falsely impersonating an officer.

270 893.13(2)(a)2. 3rd Purchase of any s. 893.03(1)(c),
(2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9.,
(3), or (4) drugs other than cannabis.

271 893.147(2) 3rd Manufacture or delivery of drug
paraphernalia.

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274 (e) LEVEL 5

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275	Florida Statute	Felony Degree	Description
	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
276	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
277	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
278	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
279	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
280	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
281	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
282	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
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284 624.401(4)(b)2. 2nd Transacting insurance without a
certificate or authority; premium
collected \$20,000 or more but less than
\$100,000.

285 626.902(1)(c) 2nd Representing an unauthorized insurer;
repeat offender.

286 790.01(2) 3rd Carrying a concealed firearm.

287 790.162 2nd Threat to throw or discharge destructive
device.

288 790.163(1) 2nd False report of deadly explosive or
weapon of mass destruction.

289 790.221(1) 2nd Possession of short-barreled shotgun or
machine gun.

290 790.23 2nd Felons in possession of firearms,
ammunition, or electronic weapons or
devices.

291 800.04(6)(c) 3rd Lewd or lascivious conduct; offender
less than 18 years.

292 800.04(7)(b) 2nd Lewd or lascivious exhibition; offender
18 years or older.

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293	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
294	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
295	812.015(8)	3rd	Retail theft; property stolen is valued at <u>\$600</u> \$300 or more and one or more specified acts.
296	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
297	812.131(2)(b)	3rd	Robbery by sudden snatching.
298	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
299	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
300	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property

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301			values relating to the solvency of an insuring entity.
	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
302			
	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
303			
	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
304			
	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
305			
	827.071 (5)	3rd	Possess any photographic material, motion picture, etc., which includes sexual conduct by a child.
306			
	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency

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			involving great bodily harm or death.
307	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
308	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
309	847.0137(2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
310	847.0138(2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
311	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
312	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
313	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child

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care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

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893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.

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893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

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893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

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893.13(4)(b) 2nd Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

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893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing of
 controlled substance.

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Section 4. This act shall take effect October 1, 2009.