

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 429 Robbery by Sudden Snatching
SPONSOR(S): Criminal Justice Subcommittee; Hudson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 876

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|-----------|--|
| 1) Criminal Justice Subcommittee | 13 Y, 1 N, As CS | Williams | Cunningham |
| 2) Justice Appropriations Subcommittee | 15 Y, 0 N | McAuliffe | Jones Darity |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property *from the victim's person*, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking. Robbery by sudden snatching is generally a third degree felony.

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse. At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip. The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the property actually be "on" the victim's person, not simply next to her. Several other courts have reached the same conclusion when presented with similar facts.

The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching include the taking of money or other property from the victim's person or from the area within the victim's immediate reach or control.

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because the number of persons that would be convicted of robbery by sudden snatching when the property is within immediate reach of the victim is unknown. Since such offenses were previously punishable as a misdemeanor theft offense with a possible local jail sentence, and would now be a third degree felony with a possible state prison sentence, this bill will likely have a negative impact on state prison beds, but that impact is unknown. This bill may also have a positive jail bed impact on local governments, and could increase the workload for state attorneys. See fiscal section.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Theft

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses,¹ 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; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.²

The penalties for a violation of s. 812.014, F.S., are generally tied to the value of stolen goods.³ For example:

- If the value of the stolen property is \$100,000 or greater, the offense is punishable as a first degree felony.⁴
- If the value of the stolen property is between \$20,000 and \$100,000, the offense is a second degree felony.⁵
- If the value of the stolen property is between \$300 and \$20,000, the offense is a third degree felony.⁶
- If the value of the stolen goods is between \$100 and \$300, the offense is a first degree misdemeanor.⁷
- If the value of the stolen goods is valued at less than \$100, the offense is a second degree misdemeanor.^{8,9}

Additionally, theft of specifically identified property may be subject to greater penalties regardless of the value of the stolen items.¹⁰

Robbery

Section 812.13, F.S., defines "robbery" as the taking of money or other property which may be the subject of larceny¹¹ from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking¹² there is the use of force, violence, assault, or putting in fear. Robbery is generally a second degree felony.¹³ However, if in the course of committing the robbery¹⁴ the offender carried a firearm or

¹ The term "obtains or uses" means any manner of: taking or exercising control over property; making an unauthorized use, disposition, or transfer of property; obtaining property by fraud, willful misrepresentation of a future act, or false promise; conduct previously known as stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, obtaining money or property by false pretenses, fraud, or deception; or other conduct similar in nature. Section 812.012(3), F.S.

² Section 812.014(1), F.S.

³ See s. 812.014(3)(a), F.S.

⁴ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 812.14(2) and (3), F.S.

¹⁰ For example, s. 812.14, F.S., provides that theft of a stop sign is a third degree felony.

¹¹ In 1977, the legislature amended ch. 812, F.S., extensively and replaced the term "larceny" with the term "theft." See Ch. 77-342, L.O.F., and *Daniels v. State*, 587 So.2d 460, 462 (Fla. 1991). However, the legislature has not changed the term "larceny" in the statute prohibiting robbery.

¹² Section 812.13(3)(b), F.S., specifies that an act is "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.

¹³ Section 812.13(2)(c), F.S.

¹⁴ Section 812.13(3)(a), F.S., specifies that an act is "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

other deadly weapon, the offense is a first degree felony, punishable by imprisonment for a term of years not exceeding life imprisonment.¹⁵ Robbery where the offender carried a weapon (other than a deadly weapon) is a first degree felony.¹⁶

Robbery by Sudden Snatching

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking,¹⁷ the victim was or became aware of the taking.¹⁸ Robbery by sudden snatching, as opposed to robbery, does not require proof of force, violence, assault, or putting in fear.

Robbery by sudden snatching is generally a third degree felony.¹⁹ However, if in the course of committing robbery by sudden snatching²⁰ the offender carried a firearm or other deadly weapon, the offense is a second degree felony.²¹

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse.²² At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip.²³ The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the property actually be "on" the victim's person, not simply next to her.²⁴ Several other courts have reached the same conclusion when presented with similar facts.²⁵

Effect of the Bill

As noted above, robbery by sudden snatching currently requires that the property being taken be on the victim's person. The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching includes the taking of money or other property from the victim's person *or from the area within the victim's immediate reach or control.*

B. SECTION DIRECTORY:

Section 1. Amends s. 812.131, F.S., relating to robbery by sudden snatching.

Section 2. Provides and effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

¹⁵ Section 812.13(2)(a), F.S.

¹⁶ Section 812.13(2)(b), F.S..

¹⁷ Section 812.131(3)(b), F.S., specifies that an act is "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

¹⁸ In order to satisfy this definition, it is not necessary to show that the offender used any amount of force beyond that effort necessary to obtain possession of the money or other property, or that there was any resistance offered by the victim to the offender or that there was injury to the victim's person. *See* section 812.131(1)(a) and (b), F.S.

¹⁹ Section 812.131(2)(b), F.S.

²⁰ Section 812.131(3)(a), F.S., specifies that an act is "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

²¹ Section 812.131(2)(a), F.S.

²² *Wess v. State*, 67 So.3d 1133 (Fla. 1st DCA 2011).

²³ *Id.*

²⁴ *Id.*

²⁵ *See, e.g., Nichols v. State*, 927 So.2d 90 (Fla. 1st DCA 2006); *State v. Floyd*, 872 So.2d 445 (Fla. 2^d DCA 2004); and *Brown v. State*, 848 So.2d 361, 364 (Fla. 4th DCA 2003).

2. Expenditures:

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because the number of persons that would be convicted of robbery by sudden snatching when the property is within immediate reach of the victim is unknown. Since such offenses were previously punishable as a misdemeanor theft offense with a possible local jail sentence, and would now be a third degree felony with a possible state prison sentence, this bill will likely have a negative impact on state prison beds, but that impact is unknown.

Additionally, the bill could have a workload impact on state attorneys. According to the Florida Prosecuting Attorneys Association, "cases now prosecuted as simple theft could become sudden snatching robbery, and carry greater penalty exposure, thus increasing workload if more defendants insisted on a trial."²⁶ However, the number of such cases is unknown.²⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Certain theft offenses are punishable as misdemeanors. Robbery by sudden snatching is generally punishable as a third degree felony. Because the bill expands the definition of "robbery by sudden snatching" to include conduct that was previously only punishable as a misdemeanor theft offense, it could have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

²⁶ Email from William Cervone, Florida Prosecuting Attorneys Association. November 9, 2011. (On file with House Criminal Justice Subcommittee staff).

²⁷ *Id.*

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specifies that robbery by sudden snatching includes the taking of money or property from the area within the victim's immediate reach or control.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.