

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/SB 1102 (625276)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Rouson

SUBJECT: Criminal Offenses

DATE: April 14, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/SB 1102 increases the minimum threshold values for several theft provisions in the Florida Statutes from:

- \$300 or more to \$1,000 or more for felony theft of state sales taxes;
- \$100 or more to \$300 or more for second degree petit theft of property;
- \$100 or more, but less than \$300, to \$300 or more, but less than \$1,000 for first degree petit theft of property and for third degree grand theft of property from a dwelling or its unenclosed curtilage;
- \$300 or more to \$1,000 or more for second degree grand theft of emergency medical equipment or law enforcement equipment;
- \$300 or more to \$750 or more for third degree grand theft of property;
- \$300 or more to \$400 or more for third degree felony retail theft;
- \$300 or more to \$500 or more for third degree felony dealing in stolen property over the Internet; and
- \$150 or more to \$500 or more for the third degree felonies of stopping payment on a check with intent to defraud producer of farm or grove products; stopping payment on a check with intent to defraud any person for goods or services; worthless checks, drafts, or debit card orders; and worthless checks, drafts, or debit card orders or electronic funds transfers to remit taxes.

The Criminal Justice Impact Conference (CJIC) determined that the overall prison bed impact of the bill as originally filed would be “negative significant” (result in a decrease of more than 25 prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2017

## II. Present Situation:

There are approximately 7,700 people currently incarcerated and 38,800 on supervision for a theft crime in Florida.<sup>1</sup> Since 2005, at least 26 states have increased the threshold dollar amounts for felony theft crimes.<sup>2</sup> These states had various reasons for increasing the thresholds, including ensuring that the “amounts keep pace with inflation and the increase in the price of consumer goods.”<sup>3</sup> Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”<sup>4</sup> “Raising felony thresholds also complements state reforms designed to focus prison beds on the most serious offenders, rather than relatively low-level ones.”<sup>5</sup>

The majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.<sup>6</sup>

### Theft of State Sales Taxes

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property.<sup>7</sup> Any person who fails to remit collected sales and use tax with the intent to defraud the state commits a theft of state funds.<sup>8</sup> The punishment for the offense is based upon the value, or amount, of state taxes that were not remitted:

- If the total amount was less than \$300, the offense is a second degree misdemeanor.<sup>9</sup>

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<sup>1</sup> Department of Corrections, *2015-2016 Agency Statistics: Inmate Population and Community Supervision Population*, data of population by primary offenses, as of June 30, 2016, available at

[http://www.dc.state.fl.us/pub/annual/1516/stats/ip\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/ip_primary.html) and

[http://www.dc.state.fl.us/pub/annual/1516/stats/csp\\_primary.html](http://www.dc.state.fl.us/pub/annual/1516/stats/csp_primary.html) (last visited March 22, 2017).

<sup>2</sup> Lawrence, Alison, *Making Sense of Sentencing: State Systems and Policies* (June 2015), p. 2, National Conference of State Legislatures, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited March 22, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> Gramlich, John, and Zafft, Katie, *Updating State Theft Laws Can Bring Less Incarceration – and Less Crime* (March 31, 2016), Stateline, Pew Charitable Trusts, available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited March 22, 2017).

<sup>5</sup> See footnote 2.

<sup>6</sup> *Id.* See also Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited March 22, 2017).

<sup>7</sup> Section 212.05, F.S.

<sup>8</sup> Section 212.15, F.S.

<sup>9</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

- If the total amount was \$300 or more, but less than \$20,000, the offense is a third degree felony.<sup>10</sup>
- If the total amount was \$20,000 or more, but less than \$100,000, the offense is a second degree felony.<sup>11</sup>
- If the total amount was \$100,000 or more, the offense is a first degree felony.<sup>12</sup>

These amounts were set in 1993.<sup>13</sup>

### Property 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 or, in some cases, the type of property taken. A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or 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.<sup>14</sup>

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>15</sup> First degree petit theft, a first degree misdemeanor,<sup>16</sup> is theft of property valued at \$100 or more but less than \$300.<sup>17</sup> Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is a prior conviction,<sup>18</sup> and a third degree felony if there are two or more prior convictions.<sup>19</sup>

Third degree grand theft, a third degree felony, is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property (e.g., a firearm or fire extinguisher).<sup>20</sup>
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>21</sup>

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more, but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or

<sup>10</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. *Id.*

<sup>11</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. *Id.*

<sup>12</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

<sup>13</sup> Chapter 93-233, s. 13, L.O.F.

<sup>14</sup> Section 812.014(1), F.S.

<sup>15</sup> Section 812.014(3)(a), F.S.

<sup>16</sup> A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>17</sup> Section 812.014(2)(e), F.S.

<sup>18</sup> Section 812.014(3)(b), F.S.

<sup>19</sup> Section 812.014(3)(c), F.S.

<sup>20</sup> Section 812.014(2)(c), F.S.

<sup>21</sup> Section 812.014(3)(d), F.S.

- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>22</sup>

First degree grand theft, a first degree felony, is theft of:

- Property valued at \$100,000 or more;
- A semitrailer deployed by a law enforcement officer;
- Cargo valued at \$50,000 or more in specified circumstances; or

First degree grand theft also includes any grand theft in which, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>23</sup>

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.<sup>24</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.<sup>25</sup> The second degree grand theft provisions related to emergency medical equipment were added in 2001, and law enforcement equipment in 2007.<sup>26</sup> The petit theft provisions were amended, including the thresholds, in 1996.<sup>27</sup>

### **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 defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen).<sup>28</sup>

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the

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<sup>22</sup> Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency.

<sup>23</sup> Section 812.014(2)(a), F.S.

<sup>24</sup> Chapter 86-161, s. 1, L.O.F.

<sup>25</sup> Chapter 96-388, s. 49, L.O.F.

<sup>26</sup> Chapters 2001-115, s. 2, and 2007-115, s. 2, L.O.F.

<sup>27</sup> Chapter 96-388, s. 49, L.O.F.

<sup>28</sup> Section 812.015(8), F.S.

activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.<sup>29</sup> The statute also requires a fine of not less than \$50 and not more than \$1,000 for a second or subsequent conviction for petit theft from a merchant<sup>30</sup> and provides that it is a third degree felony to possess, or use or attempt to use, any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise.<sup>31</sup>

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.<sup>32</sup>

### **Dealing in Stolen Property Over the Internet**

It is a crime for any person to use the Internet to sell or offer for sale property that the person knows or has a reasonable cause to believe that the property is stolen. The punishment for the offense is based upon the value of the stolen property:

- If the total value was less than \$300, the offense is a second degree misdemeanor.
- If the total value was \$300 or more, the offense is a third degree felony.<sup>33</sup>

This crime was created in 2001.<sup>34</sup>

### **Checks Fraud**

#### ***Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products***

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to a producer of farm or grove products with the intent to defraud such producer by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the farm or grove products:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a first degree misdemeanor.<sup>35</sup>

The last time the Legislature increased the minimum threshold product value for this offense was in 1986.<sup>36</sup>

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<sup>29</sup> Section 812.015(9), F.S.

<sup>30</sup> Section 812.015(2), F.S.

<sup>31</sup> Section 812.014(7), F.S.

<sup>32</sup> Chapter 2001-115, s. 3, L.O.F.

<sup>33</sup> Section 812.0195, F.S.

<sup>34</sup> Chapter 2001-115, s. 6, L.O.F.

<sup>35</sup> Section 832.04, F.S.

<sup>36</sup> Chapter 86-161, s. 7, L.O.F.

***Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services***

It is a crime for a person to make, draw, utter, deliver, or give a check, draft, or written order to any person for goods or services with the intent to defraud such person by stopping payment on the check, draft, or written order. The punishment for the offense is based upon the value of the goods or services:

- If the total value was less than \$150, the offense is a second degree misdemeanor.
- If the total value was \$150 or more, the offense is a third degree felony.<sup>37</sup>

The last time the Legislature increased the minimum threshold goods or services value for this offense was in 1986.<sup>38</sup>

***Worthless Checks, Drafts, or Debit Card Orders***

It is unlawful to draft or issue a check, draft, or debit card order, knowing there are insufficient funds or credit.<sup>39</sup> The punishment for violating this is a first degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order was for \$150 or more and the payee receives something of value.

It is also unlawful to receive anything of value by means of a worthless check or draft knowing there are insufficient funds or credit<sup>40</sup> and to use a debit card to obtain anything of value knowing there are insufficient funds or credit.<sup>41</sup> The punishment for violating either of these provisions is based upon value:

- If the check, draft, or debit card order was less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.<sup>42</sup>

The last time the Legislature increased the minimum threshold values for this offense was in 1986.<sup>43</sup>

***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes***

It is unlawful to draft or issue to the Department of Revenue any check or draft, or to use a debit card, to make any electronic funds transfer for the payment of any taxes, penalties, interest, fees, or associated amounts administered by the department, knowing that there are insufficient funds or credit.<sup>44</sup> The punishment for violating either of these provisions is based upon value:

- If the check, draft, debit card order, or electronic funds transfer was less than \$150, the offense is a second degree misdemeanor.

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<sup>37</sup> Section 832.041, F.S.

<sup>38</sup> Chapter 86-161, s. 8, L.O.F.

<sup>39</sup> Section 832.05(2)(a), F.S.

<sup>40</sup> Section 832.05(4)(a), F.S.

<sup>41</sup> Section 832.05(4)(b), F.S.

<sup>42</sup> Section 832.05(4)(c), F.S.

<sup>43</sup> Chapter 86-161, s. 9, L.O.F.

<sup>44</sup> Section 832.062(1), F.S.

- If the check, draft, or debit card order was \$150 or more, the offense is a third degree felony.<sup>45</sup>

This crime was created in 1987.<sup>46</sup>

### III. Effect of Proposed Changes:

The bill increases the minimum threshold values for several theft provisions in the Florida Statutes.

#### Theft of State Sales Taxes (Section 1)

The bill amends s. 212.15, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$1,000, instead of \$300, the offense is a second degree misdemeanor.
- If the total amount is \$1,000 or more, instead of \$300 or more, but is less than \$20,000, the offense is a third degree felony.<sup>47</sup>

The remaining penalties are unchanged by the bill.

Sections 202.28 and 202.33, F.S., related to communication services tax, and s. 206.56, F.S., related to motor and other fuel taxes, contain similar provisions to s. 212.15, F.S., related to theft of state taxes. The bill does not change these provisions, and thus *creates a discrepancy in tax administration*.

#### Property Theft (Section 2)

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

- Second degree petit theft of property valued at less than \$300, instead of \$100.
- First degree petit theft of property valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.<sup>48</sup>
- Third degree grand theft of property valued at \$750 or more, instead of \$300 or more, but less than \$20,000.<sup>49</sup>

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<sup>45</sup> Section 832.062(2), F.S.

<sup>46</sup> Chapter 87-102, s. 11, L.O.F.

<sup>47</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1993 has the same buying power as \$505.75 in 2017 dollars. CPI Inflation Calculator available at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited March 23, 2017). "The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. This data represents changes in the prices of all goods and services purchased for consumption by urban households. For the current year, the most recently published monthly index value is used."

<sup>48</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1996 has the same buying power as \$465.78 in 2017 dollars.

<sup>49</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1986 has the same buying power as \$666.80 in 2017 dollars.

- Third degree grand theft of property from a dwelling or its unenclosed curtilage if the property is valued at \$300 or more, but less than \$1,000, instead of \$100 or more, but less than \$300.<sup>50</sup>
- Second degree grand theft of emergency medical equipment or law enforcement equipment valued at \$1,000 or more, instead of \$300 or more, in specified circumstances.<sup>51</sup>

### **Retail Theft (Section 3)**

The bill amends s. 812.015, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total amount is less than \$400, instead of less than \$300, the offense would be punishable as provided in s. 812.014, F.S.
- If the total amount is \$400 or more, instead of \$300 or more, the offense is a third degree felony.<sup>52</sup>

It appears that more crimes may be found to be second degree petit theft:

- Under current law, retail theft of an amount *less than \$300* would likely be:
  - First degree petit theft (theft of property valued at \$100 or more, but less than \$300); or
  - Second degree petit theft (theft of property valued at less than \$100).
- Under the bill, retail theft of an amount *less than \$400* would likely be:
  - First degree petit theft (theft of property valued at \$300 or more, but less than \$1,000); or
  - Second degree petit theft (theft of property valued at less than \$300).

Additionally, the bill appears to *create a discrepancy in the punishment of crimes*:

- Under current law:
  - Retail theft of an amount \$300 or greater is a third degree felony; and
  - Property theft of an amount \$300 or greater is a third degree felony as third degree grand theft.
- Under the bill:
  - Retail theft of an amount \$400 or greater is a third degree felony; and
  - Property theft of an amount \$750 or greater is a third degree felony as third degree grand theft.

### **Dealing in Stolen Property Over the Internet (Section 4)**

The bill amends s. 812.0195, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$300, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$300 or more, the offense is a third degree felony.<sup>53</sup>

<sup>50</sup> See footnote 48.

<sup>51</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars, and \$300 in 2007 has the same buying power as \$352.47 in 2017 dollars.

<sup>52</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$412.65 in 2017 dollars.

<sup>53</sup> *Id.*



## **Checks Fraud**

### ***Stopping Payment on a Check with Intent to Defraud Producer of Farm or Grove Products (Section 5)***

The bill amends s. 832.04, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a first degree misdemeanor.<sup>54</sup>

### ***Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)***

The bill amends s. 832.041, F.S., to increase the values that are the basis for the punishment for the offense:

- If the total value is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the total value is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>55</sup>

### ***Worthless Checks, Drafts, or Debit Card Orders (Section 7)***

The bill amends s. 832.05, F.S., to increase the values that are the basis for the punishment for the offenses provided in the statute.

For violations of drafting or issuing a check, draft, or debit card order, knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishment:

- If the check, draft, or debit card order is for less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is for \$500 or more, instead of \$150 or more, and the payee receives something of value, the offense is a third degree felony.<sup>56</sup>

For violations of receiving anything of value by means of a worthless check or draft knowing there are insufficient funds or credit and using a debit card to obtain anything of value knowing there are insufficient funds or credit, the bill increases the values that are the basis for the punishments:

- If the check, draft, or debit card order is less than \$500, instead of less than \$150, the offense is a first degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>57</sup>

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<sup>54</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1986 has the same buying power as \$333.40 in 2017 dollars.

<sup>55</sup> *Id.*

<sup>56</sup> See footnote 49.

<sup>57</sup> *Id.*

***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)***

The bill amends s. 832.062, F.S., to increase the values that are the basis for the punishment for the offense:

- If the check, draft, debit card order, or electronic funds transfer is less than \$500, instead of less than \$150, the offense is a second degree misdemeanor.
- If the check, draft, or debit card order is \$500 or more, instead of \$150 or more, the offense is a third degree felony.<sup>58</sup>

**Other**

The bill amends s. 921.0022, F.S., (Section 9), to make conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill.

The bill reenacts ss. 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557, F.S., (Sections 10 – 17), to incorporate the changes made by the bill.

The bill is effective July 1, 2017 (Section 18).

**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:**

None.

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<sup>58</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$150 in 1987 has the same buying power as \$321.66 in 2017 dollars.

### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed SB 1102, and determined that the overall prison bed impact of the bill will be “negative significant” (result in a decrease of more than 25 prison beds).<sup>59</sup> The CJIC has not yet reviewed the impact of the PCS. What follows is the CJIC’s section by section analysis of the impact on state prison beds of the bill as originally filed:

#### **Theft of State Sales Taxes (Section 1)**

A person who commits petit theft of state sales taxes (under the bill, revenue stolen at a value of less than \$1,000), and who has previously been convicted of such theft commits a first degree misdemeanor, or who has previously been convicted two or more times of such theft commits a third degree felony.<sup>60</sup>

The CJIC estimated that “[n]o offenders should be impacted who are currently charged for a third or subsequent offense below the \$300 threshold, but a proportion between \$300 and \$1,000, which currently face a 3rd degree felony, would not be charged with a felony until their third offense.”

Per the Department of Corrections (DOC), in Fiscal Year 2015-2016, one offender was sentenced for a third or subsequent offense under the \$300 threshold, and that offender did not receive a prison sentence. For those committing an offense between \$300 and \$20,000, 25<sup>61</sup> offenders were sentenced, and none of these offenders received a prison sentence. The number of offenders that currently fall within the proposed changes to this threshold cannot be differentiated from the current thresholds.

The CJIC estimated that prison bed impact of section 1 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### **Property Theft (Section 2)**

Per the DOC, in Fiscal Year 2015-2016, no offenders were sentenced for the offenses in ss. 812.014(2)(b)3. (stealing certain emergency medical equipment) and (2)(b)4., F.S. (stealing certain law enforcement equipment). The CJIC estimated that prison bed impact of these provisions of section 2 would be negative insignificant (result in a decrease of 10 or fewer prison beds).

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<sup>59</sup> Criminal Justice Impact Conference, Office of Economic and Demographic Research, *Narrative Analysis of Adopted Impacts: HB 693 – Criminal Offenses (Identical to SB 1102)*, March 2, 2017, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB693.pdf> (last visited March 23, 2017). All further CJIC estimate information is from this source.

<sup>60</sup> Section 812.15(2)(a), F.S.

<sup>61</sup> The abbreviation “adj.” means “adjusted.” The abbreviation “unadj.” means “unadjusted.” Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

A person who commits petit theft (under the bill, property stolen at a value of less than \$1,000), and who has previously been convicted of any theft commits a first degree misdemeanor, or who has previously been convicted two or more times of any theft commits a third degree felony.<sup>62</sup>

Per the DOC, in Fiscal Year 2015-2016, there were:

- 11,028 offenders sentenced under s. 812.014(2)(c)1., F.S., (third degree grand theft) with 1,273 of these offenders sentenced to prison (mean sentence length = 25.9 months, incarceration rate: 11.5%).
- 174 offenders sentenced under s. 812.014(2)(d), F.S., (third degree grand theft from a dwelling or its curtilage) with 36 of these offenders sentenced to prison (mean sentence length = 23.7 months, incarceration rate: 20.7%).
- 3,951 offenders sentenced under s. 812.014(3)(c), F.S., (convicted of petit theft two or more times previously) with 547 of these offenders sentenced to prison (mean sentence length = 24.7 months, incarceration rate: 13.8%).

The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds. However, 36 offenders were sentenced to prison under s. 812.014(2)(d), F.S., and 547 offenders were sentenced to prison under s. 812.014(3)(c), F.S. (\$100 to \$300), which would not include these offenders within the parameters of the current bill (\$300 to \$1,000). That change alone would be a significant effect. However, a certain number of offenders currently charged with third degree grand theft will now fall into the new thresholds for these two penalties. Although that number cannot be quantified, there is expected to be a significant overall effect on prison beds.

The CJIC estimated that prison bed impact of these provisions of section 2 would be “negative significant” (result in an increase of more than 25 prison beds).

### **Retail Theft (Section 3)**

Per the DOC, in Fiscal Year 2015-2016, there were 394 offenders sentenced under s. 812.015(8), F.S., with 84 of these offenders sentenced to prison (mean sentence length = 28.3 months, incarceration rate: 21.3%). It is unknown how many of these offenders committed retail theft in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 3 would be “negative indeterminate” (result in an unquantifiable increase in prison beds).

### **Dealing in Stolen Property Over the Internet (Section 4)**

Per the DOC, in Fiscal Year 2015-2016, there were 4 offenders sentenced under s. 812.0195, F.S., with 1 offender sentenced to prison (mean sentence length = 15.0

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<sup>62</sup> Section 812.014(3)(b) and (c), F.S.

months, incarceration rate: 25.0%). It is unknown how many of the offenders who committed this offense were in the range between \$300 and \$500.

The CJIC estimated that prison bed impact of section 4 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

### **Checks Fraud**

#### ***Stopping Payment on a Check with Intent to Defraud Any Person for Goods or Services (Section 6)***

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.041, F.S.

The CJIC estimated that prison bed impact of section 6 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### ***Worthless Checks, Drafts, or Debit Card Orders (Section 7)***

Per the DOC, in Fiscal Year 2015-2016, there were 157 offenders sentenced for offenses related to worthless checks, with 11 offenders sentenced to prison (mean sentence length = 29.3 months, incarceration rate: 7.0%). The number of offenders who committed offenses under these particular subsections is unknown because the DOC does not have specific codes for these offenses. Additionally, how many of the offenders who committed this offense were in the range between \$150 and \$500 is unknown.

The CJIC estimated that prison bed impact of section 7 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

#### ***Worthless Checks, Drafts, or Debit Card Orders or Electronic Funds Transfers to Remit Taxes (Section 8)***

Per the DOC, in Fiscal Year 2015-2016, there were no offenders sentenced under s. 832.062, F.S.

The CJIC estimated that prison bed impact of section 8 would be “negative insignificant” (result in a decrease of 10 or fewer prison beds).

## **VI. Technical Deficiencies:**

Section 2 of the bill amends the provision for third degree grand theft to apply to property valued *at \$750 or more*, instead of \$300 or more, but less than \$20,000. However, the bill amends the other provisions in the theft statute, s. 812.014, F.S., to be based upon property valued at \$1,000:

- First degree petit theft of property valued at \$300 or more, *but less than \$1,000*, instead of \$100 or more, but less than \$300.
- Third degree grand theft of property from a dwelling or its unenclosed curtilage if the property is valued at \$300 or more, *but less than \$1,000*, instead of \$100 or more, but less than \$300.

- Second degree grand theft of emergency medical equipment or law enforcement equipment valued at \$1,000 or more, instead of \$300 or more, in specified circumstances.

The bill needs to amend the other property value ranges to be consistent with the change to the third degree grand theft property value range.

## VII. Related Issues:

A study by the Pew Charitable Trusts evaluated 23 states that had changed their felony theft thresholds between 2001 and 2011 and made the following findings:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates.
- States that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.<sup>63</sup>

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.15, 812.014, 812.015, 812.0195, 832.04, 832.041, 832.05, 832.062, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 634.319, 634.421, 636.238, 642.038, 705.102, 812.0155, 985.11, and 985.557.

## IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommend CS by Appropriations Subcommittee on Criminal and Civil Justice on April 13, 2017:**

The committee substitute changes the following property value ranges for two theft crimes:

- Third degree felony theft applies to property valued at \$750 or more, instead of \$1,000 or more under the original bill.
- Retail theft applies to property valued at \$400 or more, instead of \$500 or more under the original bill.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>63</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited March 22, 2017).