

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 Committee on Criminal Justice

BILL: SB 608

INTRODUCER: Senator Clemens

SUBJECT: Decreasing Penalties for Certain Criminal Acts

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Pre-meeting
2.			TR	
3.			ACJ	
4.			AP	

I. Summary:

SB 608 reduces criminal penalties for numerous offenses. Most of these offenses are misdemeanors, such as various traffic violations and possession of 20 grams or less of cannabis. Generally, the bill reduces first degree misdemeanors to second degree misdemeanors and second degree misdemeanors to noncriminal violations.

The bill also reduces punishment for resisting with violence an officer checking motor vehicle weight from a third degree felony to a second degree misdemeanor.

For certain drug offenders, the bill requires issuance of a driver license restricted to business or employment purposes if the offenders are otherwise qualified for such license, in contrast to current law which makes issuance discretionary.

The bill also makes the following changes regarding theft offenses:

- Increases the property value threshold for grand theft from \$300 to \$1,000;
- Reduces punishment for petit theft with two or prior theft convictions from a third degree felony to a second degree misdemeanor;
- Punishes theft of a will or fire extinguisher based on value, in contrast to current law which punishes the theft as a third degree felony;
- Reduces punishment for theft of a commercially farmed animal, a bee colony, or an aquacultural species from a third degree felony to a second degree misdemeanor; and
- Reduces punishment for theft of a stop sign from a third degree felony to a noncriminal violation punishable by a \$500 fine.

A preliminary estimate by the Legislature's Office of Economic and Demographic Research (EDR) is that there will be a significant decrease in prison beds if punishment for petit theft with

two or more prior convictions is reduced from a third degree felony to a second degree misdemeanor. The EDR estimates this change will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs and \$75,724,396 in annual fixed capital outlay costs).

The EDR's preliminary estimate is that some other sections of the bill will result in an insignificant or indeterminate decrease in prison beds.

II. Present Situation:

The bill amends numerous sections of the Florida Statutes. A summary of those sections is provided in the "Effect of Proposed Changes" section of this analysis.

III. Effect of Proposed Changes:

The bill, which takes effect July 1, 2017, primarily reduces punishment for several misdemeanors and third degree felonies. A description of the statutes amended and the changes to those statutes made by the bill is provided below.

Crashes Involving Damage to Vehicles or Property (Section 1)

Current Law: Section 316.061(1), F.S., requires the driver of any vehicle involved in a crash resulting only in damage to a vehicle or other property which is driven or attended by any person to immediately stop the vehicle at the scene of the crash or as close to the scene of the crash as possible. The driver must return without delay to and remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062, F.S. (duty to give information and render aid). A person who violates this subsection commits a second degree misdemeanor.¹

Proposed Changes: Section 1 of the bill amends s. 316.061(1), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.²

White Cane Offense (Section 2)

Current Law: Section 316.1301(1), F.S., provides that it is a second degree misdemeanor for a person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

Proposed Changes: Section 2 of the bill repeals s. 316.1301(1), F.S., thereby eliminating this white cane offense.

¹ A second degree misdemeanor is punishable by up to 60 days in jail, a fine up to \$500, or both jail and a fine. Sections 775.082 and 775.083, F.S.

² A noncriminal violation is punishable under s. 775.083, F.S., by a fine up to \$500.

Violations Relating to Windshields, Windows, and Sunscreening Material (Section 3)

Current Law: Section 316.2956(3), F.S., provides that it is a second degree misdemeanor for a person to sell or install sunscreening material in violation of any provision of ss. 316.2951-316.2955, F.S. (requirements relating to motor vehicle windows, windshields, and window sunscreening).

Proposed Changes: Section 3 of the bill amends s. 316.2956(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Violations Relating to Vehicle Weighing and Loading (Section 4)

Current Law: Section 316.545(1), F.S., provides that an officer of the Florida Highway Patrol may require the driver of a vehicle to stop and submit to the weighing of the vehicle by means of either portable or fixed scales if the officer has reason to believe that the weight of the vehicle and load is unlawful. Anyone who refuses to submit to this weighing obstructs an officer pursuant to s. 843.02, F.S.,³ and commits a first degree misdemeanor.⁴ Anyone who knowingly and willfully refuses to submit to such weighing by resisting the officer with violence to the officer's person pursuant to s. 843.01, F.S.,⁵ commits a third degree felony.⁶

Proposed Changes: Section 4 of the bill amends s. 316.545(1), F.S., to reduce punishment for the nonviolent obstruction of the patrolman from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S. The bill also reduces punishment for the violent obstruction of the patrolman from a third degree felony to a second degree misdemeanor. (See "Technical Deficiencies" section of this analysis for further information regarding these proposed changes.)

Invalid Motor Vehicle Insurance (Section 5)

Current Law: Section 324.022, F.S., requires every registered owner or operator of a motor vehicle to maintain property insurance. Section 324.023, F.S., requires a registered owner or operator of a motor vehicle to have liability insurance for bodily injury or death for a specified period if the owner or operator has pled guilty or nolo contendere or has been convicted of driving under the influence. Unless an exception applies, s. 627.733, F.S., requires every owner or registrant of a motor vehicle to maintain personal injury protection insurance.

Section 316.646(1), F.S., provides that any person required to maintain insurance under s. 324.022, F.S., s. 324.023, F.S., or s. 627.733, F.S., shall have in his or her immediate possession at all times while operating the motor vehicle proper proof of maintenance of the

³ Section 843.02, F.S., provides that it is a first degree misdemeanor to resist, obstruct, or oppose a law enforcement officer or other person without offering or doing violence to the person of the officer or other specified person.

⁴ A first degree misdemeanor is punishable by up to 1 year in jail, a fine up to \$500, or both jail and a fine. Sections 775.082 and 775.083, F.S.

⁵ Section 843.01, F.S., provides that it is a third degree felony to knowingly and willfully resist, obstruct, or oppose a law enforcement officer or other specified person by offering or doing violence to the person of the officer or other specified person.

⁶ A third degree felony is punishable by up to 5 years in prison, a fine up to \$5,000, or both jail and a fine. Sections 775.082 and 775.083, F.S.

required insurance. Section 316.646(4), F.S., provides that any person presenting proof of insurance as required by s. 316.646(1), F.S., who knows that the insurance as represented by the proof of insurance is not currently in force commits a first degree misdemeanor.

Proposed Changes: Section 5 of the bill amends s. 316.646(4), F.S., to reduce punishment for a violation of this subsection from a first degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Refusal to Accept and Sign a Traffic Summons (Section 6)

Current Law: Unless an exception applies, s. 318.14(2), F.S., provides that any person cited for a traffic infraction listed in s. 318.19, F.S., that requires a mandatory hearing or any other criminal traffic violation listed in ch. 316, F.S. (the Florida Uniform Traffic Law) must sign and accept a citation indicating a promise to appear (summons). Section 318.14(3), F.S., provides that any person who willfully refuses to accept and sign a summons as provided in s. 318.14(2), F.S., commits a second degree misdemeanor.

Proposed Changes: Section 6 of the bill amends s. 318.14(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Offenses Involving Indicia of Ownership of a Motor Vehicle or Mobile Home (Section 7)

Current Law: Section 319.33(4), F.S., provides that it is a third degree felony for a person to knowingly and with intent to defraud have in his or her possession, sell, offer to sell, counterfeit, or supply a blank, forged, fictitious, counterfeit, stolen, or fraudulently or unlawfully obtained certificate of title, registration, bill of sale, or other indicia of ownership of a motor vehicle or mobile home or to conspire to do any of the foregoing.

Proposed Changes: Section 7 of the bill renumbers s. 319.33(4), F.S., as s. 319.33(6), F.S. (and makes other renumbering changes), and reduces punishment for a violation s. 319.33(6), F.S., from a third degree felony to a second degree misdemeanor.

Issuance of a Commercial License (Section 8)

Current Law: Section 322.03(b), F.S., provides that, except as provided in s. 322.03(3)(c), F.S., it is a first degree misdemeanor for a Florida resident who is required by Florida law to possess a commercial driver license to operate a commercial motor vehicle in Florida unless he or she possesses a valid Florida commercial driver license. Section 322.03(3)(c), F.S., provides that it is a nonmoving violation for a person whose commercial driver license has expired for a period of 30 days or less to drive a commercial motor vehicle in Florida.

Proposed Changes: Section 8 of the bill amends s. 322.03(3)(c), F.S., to reduce the punishment for a violation of this paragraph from a first degree misdemeanor to a second degree misdemeanor. It also amends s. 322.03(3)(b) and (c), F.S., to replace the term “is guilty of” with “commits.” This is only a technical change to use more contemporary wording regarding the

penalties in these paragraphs. The bill does not make any substantive change to the offense or its penalty in s. 322.03(3)(c), F.S.

Restricted Driver License for Business or Employment Purposes (Section 9)

Current Law: Section 322.055(1), F.S., provides that upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the Department of Highway Safety and Motor Vehicles (DHSMV) to revoke the person's driver license or driving privilege. The period of the revocation is 1 year or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families.

The court may direct the DHSMV to issue a license for driving privilege restricted to business or employment purposes only (further referenced as "restricted license"), if the person is otherwise qualified for the license. If a person's driver license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S.,⁷ and 6 months have elapsed, the person may petition the DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

Proposed Changes: Section 9 of the bill amends s. 322.055(1), F.S., to change the process for issuance of the restricted license. Under the bill, the driver license is not revoked for the specified period with the possible issuance of a restricted license, but rather the driver license is restricted for the specified period, if the person otherwise qualifies for the license. The bill further provides that if a person's driver license or driving privilege has been suspended, restricted, or revoked under s. 322.055, F.S., or s. 322.056, F.S., and 6 months have elapsed, the person may petition the DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of the suspension or revocation. (See "Technical Deficiencies" section of this analysis for further information regarding these proposed changes.)

Possession of Alcoholic Beverages by Persons under Age 21 (Section 10)

Current Law: Section 562.111(1), F.S., provides that, with certain employment exceptions, it is unlawful for any person under the age of 21, to have in her or his possession alcoholic beverages. Any person under the age of 21 who is convicted of a violation of this subsection commits a second degree misdemeanor.⁸

Proposed Changes: Section 10 of the bill amends s. 562.111(1), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S., or a term of community supervision determined by a judge, or both.

⁷ This section requires license revocation when a person under 18 years of age is found guilty of certain alcohol, drug, or tobacco offenses.

⁸ However, any person under the age of 21 who has been convicted of a violation of this subsection and who is thereafter convicted of a further violation of this subsection is, upon conviction of the further offense, guilty of a first degree misdemeanor. Section 562.111(1), F.S. The bill does not amend this subsection.

Sale of Alcoholic Beverages (Section 11)

Current Law: Section 562.14(1), F.S., provides that, except as otherwise provided by county or municipal ordinance, alcoholic beverages may not be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the Division of Alcoholic Beverages and Tobacco⁹ between the hours of midnight and 7 a.m. of the following day, unless an exception applies.¹⁰

Section 562.14(2), F.S., provides that, except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor's licensed premises and whose principal business is the sale of alcoholic beverages shall allow the licensed premises to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited.¹¹

Pursuant to s. 562.14(4), F.S., a violation of s. 562.14(1) or (2), F.S., is a second degree misdemeanor.

Proposed Changes: Section 11 of the bill amends s. 562.14, F.S., to reduce punishment for a violation of s. 562.14(1), F.S., from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S. A violation of s. 562.14(2), F.S., continues to be a second degree misdemeanor but the punishment language for that violation is moved from subsection (4) to subsection (2), and subsection (4) is repealed.

Habitual Drunkards (Section 12)

Current Law: Section 562.50, F.S., provides that it is a second degree misdemeanor for any person to sell, give away, dispose of, exchange, or barter any alcoholic beverage or other specified intoxicants to any person habitually addicted to the use of any intoxicating liquor, after having been given written notice by wife, husband, or a specified relative that this addicted person is an habitual drunkard and that the use of intoxicating drink is injuring the addicted person or the person giving written notice.

Proposed Changes: Section 12 of the bill amends s. 562.50, F.S., to reduce punishment for a violation of this section from a second degree misdemeanor to a noncriminal violation under s. 775.083.

Grand Theft and Petit Theft (Section 13)

Current Law: Section 812.014(2)(c), F.S., generally provides that, when a theft is based on property value, the threshold property value for grand theft of the third degree, a third degree felony, is \$300. However, under s. 812.014(2)(d), F.S., it is also grand theft of the third degree, a

⁹ The Division of Alcoholic Beverages and Tobacco is part of the Florida Department of Business and Professional Regulation. Section 20.165(2)(b), F.S.

¹⁰ This section does not apply to railroads selling only to passengers for consumption on railroad cars. Section 562.14(1), F.S.

¹¹ This prohibition does not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex or an entertainment/resort complex. Section 562.14(2), F.S.

third degree felony, when the property stolen is valued at \$100 or more but less than \$300, and is taken from a dwelling or the unenclosed curtilage of a dwelling.

Further, under s. 812.014(2)(c), F.S., theft of some property constitutes grand theft of the third degree, a third degree felony, regardless of value. Examples of such items include:

- A will, codicil, or other testamentary instrument.
- Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and 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 stop sign.

Section 812.014(2)(e) F.S., provides that, except as provided in s. 812.014(2)(d), F.S., if the property stolen is valued at \$100 or more but less than \$300, the offender commits petit theft of the first degree, a first degree misdemeanor. Section 812.014(3)(a), F.S., which is theft of any property not specified in s. 812.014(2), F.S., is petit theft of the second degree, a second degree misdemeanor.

Section 812.014(3)(b), F.S., provides that it is first degree misdemeanor to commit petit theft if the person committing the petit theft has previously been convicted of any theft. Section 812.014(3)(c), F.S., provides that it is third degree felony to commit petit theft if the person committing the petit theft has previously been convicted two or more times of any theft.

Proposed Changes: Section 13 of the bill amends the property value threshold for grand theft of the third degree under s. 812.014(2)(c), F.S. It increases this threshold from \$300 to \$1,000. Therefore, many thefts that would constitute grand theft of the third degree under the current threshold of \$300 would constitute petit theft if the revised threshold were to become law. (See “Technical Deficiencies Section” of this analysis for further information regarding these proposed changes.)

Section 13 of the bill also amends s. 812.014(2)(c), F.S., to remove the listing of the following property for which theft of that property would constitute grand theft of the third degree regardless of its value:

- A will, codicil, or other testamentary instrument.
- Any commercially farmed animal, including any animal of the equine, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility.
- Any fire extinguisher.
- Any stop sign.

Theft of a will, codicil or other testamentary instrument, and theft of a fire extinguisher would no longer necessarily be third degree felonies. The degree of the crime will depend on the value of the property and may constitute misdemeanor petit theft. Punishment for theft of a commercially farmed animal, a bee colony, or an aquacultural species is reduced from a third degree felony to a second degree misdemeanor, though the bill retains the \$10,000 fine for theft of an

aquacultural species raised at a certified aquacultural facility. Punishment for theft of a stop sign is reduced from a third degree felony to a noncriminal violation punishable by a \$500 fine.

Section 13 of the bill also amends s. 812.014(3)(c), F.S. (petit theft with two or more prior theft convictions), to reduce punishment for a violation of this subsection from a third degree felony to a second degree misdemeanor. As a result of this change, this subsection would no longer provide a penalty enhancement based on prior theft record because the revised punishment, a second degree misdemeanor, would be equivalent to the punishment for a single conviction for petit theft of the second degree. (See “Technical Deficiencies Section” of this analysis for further information regarding these proposed changes.)

Simple Possession of 20 Grams or Less of Cannabis (Section 14)

Current Law: Section 893.13(6)(b), F.S., provides that it is a first degree misdemeanor to possess 20 grams or less of cannabis.

Proposed Changes: The bill reduces punishment for a violation of s. 893.13(6)(b), F.S., from a first degree misdemeanor to a noncriminal violation under s. 775.083, F.S., or a term of community service determined by a judge, or both.

Reenactment of Statutes (Sections 15-48)

Sections 15-48 reenact the following sections of the Florida Statutes: 95.18, 316.516, 316.655, 318.17, 318.18, 318.21, 320.02, 373.6055, 397.451, 400.9935, 409.910, 435.07, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 775.084, 810.02, 812.015, 812.0155, 812.14, 831.311, 893.138, 893.15, 921.0022, 921.187, 932.701, and 985.557. These reenactments are intended to correct cross-references and to incorporate amendments made to statutes that are referenced in the reenacted provisions.

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.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research (EDR) has reviewed the bill and provided preliminary estimates (described below) regarding sections of the bill it has determined will result in a decrease in prison beds.¹² No section of the bill was determined by the EDR to result in an increase in prison beds.

The EDR notes that its impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.

Violations Relating to Vehicle Weighing and Loading (Section 4)

Section 4 of the bill amends s. 316.545, F.S., to reduce punishment for refusing to submit to the weighing of a motor vehicle when the refusal involves violent obstruction of the weight and safety officer. Punishment is reduced from a third degree felony to a second degree misdemeanor. The EDR's preliminary estimate is that this change will have a "negative insignificant" prison bed impact (a decrease of 10 or fewer prison beds). Per the Department of Corrections (DOC), in FY 2015-2016, no offenders were sentenced for this felony.

Offenses Involving Indicia of Ownership of a Motor Vehicle or Motor Home (Section 7)

Section 7 of the bill amends s. 319.33, F.S., to reduce punishment for unlawfully possessing, selling, etc., fraudulent or unlawfully obtained indicia of ownership of a motor vehicle or mobile home from a third degree felony to a second degree misdemeanor. The EDR's preliminary estimate is that this change will have a "negative insignificant" prison bed impact. According to the EDR, the DOC does not specifically code for this offense but under the statute, in general, in FY 2015-2016, there were 5 (adj.)¹³ offenders sentenced for violating the statute. The EDR does not know whether any of them were sentenced for this specific offense.

¹² E-mail information provided by the Office of Economic and Demographic Research (February 21, 2017) (on file with the Senate Committee on Criminal Justice). All information provided by the EDR is from this source.

¹³ 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.

Restricted Driver License for Business or Employment Purposes (Section 9)

Section 9 of the bill amends s. 322.055(1), F.S., to provide that, for certain drug offenders, the court must direct the DHSMV to issue a driver license restricted to business or employment purposes for a specified period, if the person is otherwise qualified for the license. Currently, the court must direct the DHSMV to revoke the license for the specified period but may direct the DHSMV to issue the restricted license. The EDR's preliminary estimate is that this change will have a "negative insignificant" prison bed impact. Per the DOC, in FY 2015-2016, there were 4,947 (adj.) offenders sentenced for driving with a suspended, revoked, cancelled, or disqualified license. Of these 4,947 (adj.) offenders, 418 (adj.) were sentenced to prison. Their mean sentence length was 22.8 months. The incarceration rate was 8.5 percent (adj. or unadj.). The EDR does not know how many of these offenders would fit the revised license criteria.

Grand Theft and Petit Theft (Section 13)

Section 13 of the bill amends s. 812.014, F.S., to make the following changes regarding theft offenses:

- Increase the property value threshold for grand theft from \$300 to \$1,000;
- Reduce punishment for petit theft with two or prior theft convictions from a third degree felony to a second degree misdemeanor;
- Punish theft of a will or fire extinguisher based on value (currently, such theft is a third degree felony, regardless of the property's value);
- Reduce punishment for theft of a commercially farmed animal, a bee colony, or an aquacultural species from a third degree felony to a second degree misdemeanor; and
- Reduce punishment for theft of a stop sign from a third degree felony to a noncriminal violation punishable by a \$500 fine.

The EDR's preliminary estimate is that there will be a significant decrease in prison beds if punishment for the offense of petit theft with two or more prior convictions is reduced from a third degree felony to a second degree misdemeanor. The EDR estimates this change will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs¹⁴ and \$75,724,396 in annual fixed capital outlay costs¹⁵).¹⁶

The EDR's preliminary estimate is that the remainder of the changes to s. 812.014, F.S., will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds). Per the DOC, in FY 2015-2016, there were 11,028 (adj.) offenders

¹⁴ "FY 2015-16 operating costs per inmate were obtained from DOC. The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference."

¹⁵ "FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc."

¹⁶ This estimate was prepared by the EDR on February 19, 2017.

sentenced under s. 812.014(2)(c)(1), F.S. (grand theft of the third degree). Of the 11,028 (adj.) offenders, 1,273 (adj.) were sentenced to prison. Their mean sentence length was 25.9 months. The incarceration rate was 11.5 percent (adj. or unadj.) The number of offenders that currently fall within the proposed changes to s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds.

Per the DOC, in FY 2015-2016, none of the offenders sentenced for theft of a will (2 adj.), a commercial animal (6 adj.), or a fire extinguisher (6 adj.), received a prison sentence. One offender was sentenced for theft of a stop sign, and that person received a 22-month prison sentence.

VI. Technical Deficiencies:

Section 4 of the bill (lines 147-164) amends s. 316.545(1), F.S., to reduce punishment for two offenses relating to refusal to submit to weighing a motor vehicle. Currently, the offenses are tied to resisting an officer offenses in ss. 843.01 and 843.02, F.S., and punishments are equivalent. However, because the bill reduces punishments for offenses under s. 316.545(1), F.S., those punishments are no longer equivalent to punishments under ss. 843.01 and 843.02, F.S. The bill sponsor may want to consider deleting references to ss. 843.01 and 843.02, F.S. (lines 156 and 162), to avoid confusion and because offenses in s. 316.545(1), F.S., could be charged without reference to ss. 843.01 and 843.02, F.S.

Section 9 of the bill (lines 270-298) amends s. 322.055, F.S., to provide that, for certain drug offenders, the court must direct the DHSMV to issue a driver license restricted to business or employment purposes if the offenders are otherwise qualified for such license, in contrast to current law which makes issuance discretionary. The DHSMV has noted the following technical concerns¹⁷ regarding this change:

- The proposed change to this section would presumably come to the DHSMV by court order and the Bureau of Administrative Reviews¹⁸ would conduct a hearing to determine if the driver is eligible for a restricted license.
- This change would also eliminate revocation and replace it with a restricted license. This change is in conflict with references in s. 322.055, F.S., to privileges being revoked or suspended.
- This change would also eliminate the court's discretion to issue a restricted license in one area. However, there are other instances in s. 322.055(1), F.S., in which the court would continue to have discretion.
- The bill also specifies that in no case shall a license be issued until 6 months expire. However, the bill also states that the DHSMV shall restrict the license. This language is in conflict as it both allows immediate issuance of a restricted license and provides that restricted drivers can petition the DHSMV for restoration on a restricted basis after 6 months.

¹⁷ All information from the DHSMV regarding technical concerns is from e-mail communications between Senate Committee on Criminal Justice staff and DHSMV staff (March 1, 2017) (on file with the Senate Committee on Criminal Justice).

¹⁸ According to the DHSMV, the Board of Administrative Reviews (BAR) is the program which conducts hearings and reviews for the purpose of determining eligibility to reinstate driver license suspensions and revocations. The BAR conducts administrative reviews and hearings for a variety of issues; a majority of those issues are for driving with an unlawful blood alcohol level or refusal to submit to a breath, blood, or urine test.

Section 13 of the bill amends s. 812.014, F.S., the theft statute. One of the changes the bill makes to the statute is amending s. 812.014(2)(c), F.S., to change the property value threshold in that subsection for grand theft of the third degree from \$300 to \$1,000 (line 389). The bill needs to change property value ranges in s. 812.014(2)(d) and (e), F.S., to be consistent with the change to the property value threshold in s. 812.014(2)(c), F.S.

Section 13 of the bill also amends s. 812.014(3)(c), F.S. (petit theft with two or more prior theft convictions) to reduce punishment for a violation of this subsection from a third degree felony to a second degree misdemeanor. As a result of this change, this subsection would no longer provide a penalty enhancement based on prior theft record because the revised punishment, a second degree misdemeanor, would be equivalent to punishment for a single conviction for petit theft of the second degree. If the bill sponsor's intent is to only remove a felony penalty for petit theft, the sponsor may want to consider deleting this offense (removing amendatory language and striking through all current law text on lines 446-449). Petit theft with a prior theft conviction would then be punished solely by s. 812.014(3)(b), F.S., as a first degree misdemeanor.

VII. Related Issues:

According to the National Conference of State Legislatures, “[t]wenty-one states and the District of Columbia have decriminalized small amounts of marijuana. This generally means certain small, personal-consumption amounts are a civil or local infraction, not a state crime (or are a lowest misdemeanor with no possibility of jail time). Since 2013, five state legislatures have enacted marijuana decriminalization.”¹⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.061, 316.1301, 316.2956, 316.545, 316.646, 318.14, 319.33, 322.03, 322.055, 562.111, 562.14, 562.50, 812.014, 893.13.

This bill also reenacts the following sections of the Florida Statutes: 95.18, 316.516, 316.655, 318.17, 318.18, 318.21, 320.02, 373.6055, 397.451, 400.9935, 409.910, 435.07, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 775.084, 810.02, 812.015, 812.0155, 812.14, 831.311, 893.138, 893.15, 921.0022, 921.187, 932.701, and 985.557. These reenactments are intended to correct cross-references and to incorporate amendments made to statutes that are referenced in the reenacted provisions.

IX. Additional Information:

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

None.

¹⁹ “Marijuana Overview” (November 10, 2016), National Conference of State Legislatures, available at <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx> (last viewed on February 28, 2017).

B. Amendments:

None.

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