

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 Judiciary

BILL: CS/SB 928

INTRODUCER: Criminal Justice Committee and Senator Bracy and others

SUBJECT: Theft

DATE: January 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 928 increases the threshold dollar amounts and revises the types of property that qualify for criminal theft offenses. Primarily, the bill:

- Increases the property dollar values that form the basis of levels of theft crimes and penalties:
 - From less than \$100 to less than \$500 for a second degree misdemeanor;
 - From \$100 or more to \$500 or more and from less than \$300 to less than \$1,500 for a first degree misdemeanor; and
 - From \$300 or more to \$1,500 or more for a third degree felony theft and retail theft.
- Changes enhancements in the degree of crime and penalties for repeat theft offenses by:
 - Limiting the third degree felony petit theft and second degree felony retail theft enhancements to adult offenders;
 - Requiring that the third theft offense that qualifies an adult for the third degree felony petit theft enhancement be a first degree misdemeanor offense; and
 - Creating a time frame after which the qualifying theft offense must be committed in order to trigger the enhancements.
- Eliminates the theft of specific property as an automatic third degree felony offenses. These properties include:
 - A will, codicil, or other testamentary instrument;
 - Any fire extinguisher;
 - Property taken from a posted construction site;
 - Any stop sign; and
 - Anhydrous ammonia.

A preliminary review of the bill by the Office of Economic and Demographic Research staff indicates that the prison bed impact of the bill may result in a decrease of more than 25 prison beds.

The bill amends s. 921.0022, F.S., to make conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill, and amends s. 985.557, F.S., to conform cross-references.

Multiple sections of law are reenacted by the bill to incorporate the changes made by the bill.

The bill is effective October 1, 2018.

II. Present Situation:

There are approximately 3,300 people currently incarcerated in the Department of Corrections for felony theft convictions and 21,000 on state community supervision for a felony theft crime in Florida.¹ Since 2005, at least 26 states have increased the threshold dollar amounts for felony theft crimes.² 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.”³ 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.”⁴ “Raising felony thresholds also complements state reforms designed to focus prison beds on the most serious offenders, rather than relatively low-level ones.”⁵

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. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.⁶

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

¹ 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 and http://www.dc.state.fl.us/pub/annual/1516/stats/csp_primary.html (last visited January 20, 2018).

² Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited January 19, 2018).

³ *Id.*

⁴ John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (January 20, 2018).

⁵ See *supra* note 2.

⁶ *Id.*

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.⁷

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.⁸ First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.⁹ Second degree petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is one prior conviction,¹⁰ and a third degree felony if there are two or more prior convictions.¹¹

Third degree grand theft, a third degree felony,¹² is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property including:
 - A will, codicil, or testamentary instrument;
 - A firearm;
 - A motor vehicle;
 - Any commercially farmed animal, bee colony, aquaculture species or citrus fruit of over 2,000 pieces;
 - Any fire extinguisher;
 - Any stop sign;
 - Anhydrous ammonia;
 - Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
 - Property taken from a designated, posted construction site; and
 - Any amount of a controlled substance as defined in s. 893.02, F.S.¹³
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.¹⁴

Second degree grand theft, a second degree felony,¹⁵ 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

⁷ Section 812.014(1), F.S.

⁸ Section 812.014(3)(a), F.S. 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.

⁹ Section 812.014(2)(e), F.S. 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.

¹⁰ Section 812.014(3)(b), F.S.

¹¹ Section 812.014(3)(c), F.S.

¹² A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

¹³ Section 812.014(2)(c), F.S.

¹⁴ Section 812.014(2)(d), F.S.

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

- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.¹⁶

First degree grand theft, a first degree felony,¹⁷ is theft of:

- Property valued at \$100,000 or more;
- A semitrailer deployed by a law enforcement officer; or
- Cargo valued at \$50,000 or more in specified circumstances.¹⁸

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 \$1,000.¹⁹

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.²⁰ The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were amended, including the thresholds, in 1996.²¹

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. 812.015, 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).²²

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 activities of one or more persons in committing the offense of retail theft where the stolen

¹⁶ 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.

¹⁷ A first degree felony is punishable by up to 30 years' incarceration and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁸ Section 812.014(2)(a), F.S.

¹⁹ *Id.*

²⁰ Ch. 86-161, s. 1, Laws Of Fla.

²¹ Ch. 96-388, s. 49, Laws Of Fla.

²² Section 812.015(8), F.S.

property has a value in excess of \$3,000.²³ The statute also requires a fine of not less than \$50 and no more than \$1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency²⁴ 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.²⁵

The thresholds for third degree felony retail theft were created and set by the Legislature in 2001.²⁶

Farm Theft and Transit Fare Evasion

Farm theft is defined as unlawfully taking possession of any items grown or produced on land owned, rented, or leased by another person. It includes equipment and materials used to grow or produce farm products.²⁷ Farm theft is punishable under s. 812.014, F.S.

Transit fare evasion is classified as a petit theft and is the unlawful refusal to pay the appropriate fare for transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers.²⁸

Degree of Crime and Penalty Enhancements for Second or Subsequent Theft Offenses

Current law provides that a person who commits a petit theft (a misdemeanor offense) and who has any other theft conviction commits a first degree misdemeanor.²⁹ A person who commits a petit theft and who has been previously convicted two or more times of any theft commits a third degree felony.³⁰ A person who commits retail theft and has been previously convicted of retail theft commits a second degree felony.³¹

There are no time limits between theft convictions related to theft crime level and penalty enhancements.

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been “convicted” of theft and are treated the same as adult offenders for purposes of these penalty enhancements.³²

²³ Section 812.015(9), F.S.

²⁴ Section 812.015(2), F.S.

²⁵ Section 812.015(7), F.S.

²⁶ Ch. 2001-115, s. 3, Laws Of Fla.

²⁷ Section 812.015(1)(g), F.S. Farm product is defined in s. 823.14(3)(c), F.S., as any plant, as defined in s. 581.011, or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom. Section 581.011, F.S., defines plants and plant products as trees, shrubs, vines, forage and cereal plants, and all other plants and plant parts, including cuttings, grafts, scions, buds, fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all products made from them, unless specifically excluded by the rules of the Department of Agriculture.

²⁸ Section 812.015(1)(j), F.S.

²⁹ Section 812.014(3)(b), F.S.

³⁰ Section 812.014(3)(c), F.S.

³¹ Section 812.015(9)(a), F.S.

³² *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

III. Effect of Proposed Changes:

The bill increases the minimum threshold values for several theft provisions in the Florida Statutes. The bill alters the application of the crime level and penalty enhancements for repeat theft convictions. It also eliminates theft of certain items of property as specific theft crimes.

Property Theft

The bill amends misdemeanor and third degree felony property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the level of crime and penalties for these offenses:

- Second degree misdemeanor petit theft property value is changed (by default) to any value less than \$500.³³
- First degree misdemeanor petit theft property value threshold is changed to \$500 or more from \$100 or more.³⁴ Under the bill it would be a first degree misdemeanor petit theft if the property value is between \$500 or more but less than \$1,500.
- Third degree felony theft property value threshold is changed to \$1,500 or more from \$300 or more.³⁵ Under the bill a third degree felony theft would be a theft where the property value is \$1,500 or more but less than \$20,000.³⁶

Certain property items specifically set forth in s. 812.014(2)(c), F.S., are eliminated as third degree felony theft offenses, although a person can be charged with theft for unlawfully taking these items based upon their actual values. The items eliminated by the bill are:

- A will, codicil, or other testamentary instrument.
- Any fire extinguisher.
- Property taken from a posted construction site.
- Any stop sign.
- Anhydrous ammonia.³⁷

The value threshold amounts related to property taken from a dwelling or from the unenclosed curtilage of a dwelling specified in s. 812.014(2)(d), F.S., as a third degree felony offense, are increased by the bill:

- From \$100 or more to \$1,500 or more; and
- From less than \$300 to less than \$5,000 in value.³⁸

³³ Section 812.014(3)(a), F.S.

³⁴ Section 812.014(2)(e), F.S.

³⁵ Sections 812.014(2)(c)1., and 812.014(2)(d), F.S.

³⁶ According to the Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in November 1986 (when the grand theft valuation was last increased) has the same buying power as \$670.30 in November 2017 dollars. https://www.bls.gov/data/inflation_calculator.htm (last visited Jan. 20, 2018).

³⁷ According to the Center for Disease Control and Prevention, anhydrous ammonia is a colorless gas with suffocating fumes. It is used in agricultural fertilizers and industrial refrigerants. Exposure can be fatal when someone is exposed to high concentrations of this gas.

<https://www.cdc.gov/healthcommunication/toolstemplates/entertained/tips/anhydrousammonia.html>

³⁸ The theft provisions related to the theft of property from a dwelling or unenclosed curtilage thereof were created in 1996. In November 1996, according to the Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$100 had the same buying power as \$155.53 in November 2017; In November 1996, \$300 had the same

Retail Theft

The bill amends s. 812.015, F.S., to increase the value that is the basis for the third degree felony retail theft offense under s. 812.015, F.S., to \$1,500 or more, instead of \$300.³⁹

Degree of Crime and Penalty Enhancements for Second or Subsequent Theft Offenses

The bill changes the level of crime and penalty enhancements for repeat theft and retail theft offenders.

Under current law a person who commits a first or second degree misdemeanor level petit theft and who has previously been convicted two or more times of any theft commits a third degree felony.⁴⁰ The bill changes the petit theft enhancements to apply when:

- An adult who has been previously convicted two or more times of any theft as an adult and who commits a first degree misdemeanor petit theft within 3 years of his or her most recent theft conviction commits a third degree felony theft.

Therefore, the bill limits the enhancement to adult offenders who commit a new first degree misdemeanor within three years of his or her last theft conviction.

Similarly, under current law a person who has previously been convicted of a third degree felony retail theft and who commits another retail theft is subject to second degree felony penalties for the second conviction.⁴¹ The bill changes the current retail theft second degree felony enhancement to apply when:

- An adult who has previously been convicted as an adult for a retail theft commits another retail theft within 3 years of his or her prior retail theft conviction.

In a similar way to the petit theft enhancement change, the retail theft enhancement applies only to adults who commit a subsequent retail theft within the specified time frame.

Both the retail theft and the petit theft enhancement changes appear to be limited to adult offenders although it could be argued that a juvenile who has “previously been convicted as an adult” may be subject to the retail theft enhancement.

Other

The bill amends s. 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart, to conform changes made by the bill.

The bill amends s. 985.557, F.S., to conform cross-references.

buying power as \$466.59 in November 2017 dollars. https://www.bls.gov/data/inflation_calculator.htm (last visited Jan. 20, 2018).

³⁹ According to the Consumer Price Index Inflation Calculator of the U.S. Department of Labor’s Bureau of Labor Statistics, \$300 in November 2001 had the same buying power as \$417.14 in November 2017 dollars. https://www.bls.gov/data/inflation_calculator.htm (last visited Jan. 20, 2018).

⁴⁰ Section 812.014(3)(c), F.S.

⁴¹ Section 812.015(9)(a), F.S.

The bill reenacts ss. 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 943.051, and 985.11, F.S., to incorporate the amendments made by the act in cross-references to provisions amended by the bill.

The bill is effective October 1, 2018.

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 Florida Department of Corrections submitted its 2018 Agency Legislative Bill Analysis on January 4, 2018. The analysis states that the overall inmate and community supervision population fiscal impact resulting from this bill is indeterminate.⁴²

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed the bill on January 8, 2018. CJIC determined that the prison bed impact of the bill will likely be “negative significant”, meaning that the bill will result in a decrease of more than 25 prison beds.⁴³

VI. Technical Deficiencies:

None.

⁴² Department of Corrections, 2018 Agency Legislative Bill Analysis for Senate Bill 928, p. 3, (Jan. 4, 2018) (on file with the Senate Committee on Criminal Justice).

⁴³ Email from Matthew Hasbrouck, Ph.D., Office of Economic and Demographic Research, (Jan. 19, 2018) (on file with the Senate committee on Judiciary).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.014, 812.015, 921.0022, and 985.557.

This bill reenacts the following sections of the Florida Statutes: 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.0155, 812.14, 893.138, 943.051, and 985.11.

IX. Additional Information:

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

CS by Criminal Justice on January 9, 2018:

The Committee Substitute specifies the last theft conviction rather than the end of sentence on the most recent theft as the reference point for calculating the time limitations related to prior theft offenses for the purpose of crime level and penalty enhancements.

- B. **Amendments:**

None.