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 Appropriations Subcommittee on Criminal and Civil Justice

BILL:	PCS/SB 7072 (872670)
INTRODUCER:	Appropriations Subcommittee on Criminal and Civil Justice; Appropriations Committee and Senator Bradley
SUBJECT:	Justice System
DATE:	April 11, 2019
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
		Kynoch		**AP Submitted as Committee Bill**
1.	Dale	Jameson	ACJ	**Recommend: Fav/CS**
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 7072 creates section 25.025, Florida Statutes, which provides that the Chief Justice of the Florida Supreme Court shall, at the request of a justice:

- Coordinate and designate a courthouse or other appropriate facility in the justice's district as his or her official headquarters and private chambers; and
- Reimburse the justice for travel and subsistence while in Tallahassee to the extent funding is available.

The bill increases the number of circuit judges, adding one circuit court judgeship in the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship in the Twelfth Judicial Circuit Court, which includes Manatee, DeSoto and Sarasota Counties.

The bill amends section 394.47891, Florida Statutes, to require the chief judge of each judicial circuit to establish at least one Military Veterans and Servicemembers Court Program (veterans' court). Currently, 16 of the 20 judicial circuits have one or more veterans' courts. These problem-solving courts serve specified veterans who are charged or convicted of a criminal offense and who suffer from a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, in a manner that appropriately addresses the severity of the illness, injury, disorder or psychological problem.

The bill requires the Office of the State Courts Administrator to annually report to the President of the Senate and Speaker of the House of Representatives certain specified information on each problem-solving court.

The bill also amends various provisions of sections 812.014 and 812.015, Florida Statutes, related to retail and grand theft offenses to:

- Increase the threshold amount for third degree felony theft offenses from $300 to $750.
- Specify when the dollar value of prior instances of retail theft under section 812.015, Florida Statutes, must be aggregated, during any 90-day period, for purposes of determining the classification of the offense as a second or third degree felony, provide that the aggregation applies to retail theft in more than one county, and provide that the aggregated offenses shall be prosecuted by the Office of the Statewide Prosecutor.
- Authorize a fine of up to $10,000 be imposed for the theft of commercially farmed animals rather than a specified fine of $10,000.

The bill creates section 812.019(10), Florida Statutes to provide that a person who receives, possesses, or purchases merchandise or stored-value cards from a fraudulent return with knowledge the items were stolen commits a third degree felony.

The bill makes conforming changes to the Criminal Punishment Code severity ranking chart to reflect the changes made by the bill.

Adding two new circuit judges has a fiscal impact on state expenditures. The cost of veterans' courts in the four judicial circuits that do not presently have them would be determined by the Trial Courts Budget Commission (TCBC) from within existing appropriations. The Criminal Justice Impact Conference (CJIC) has not reviewed this bill. In a similar bill increasing the threshold for retail and grand theft the CJIC projected a negative impact on prison beds. *See Section V.*

Section 1. of the bill related to supreme court justices' travel is effective July 1, 2019. The remaining sections of the bill are effective October 1, 2019.

II. Present Situation:

Supreme Court Headquarters

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and the supreme court shall be maintained and the sessions of the legislature shall be held[.]"[1] Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts "shall have at least one justice elected or appointed from the district at the time of the original appointment or election." The chambers of

[1] FLA. CONST. art. II, s. 2.

all seven justices are in the Florida Supreme Court building,[2] and all official Supreme Court business is conducted in Tallahassee.[3]

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., governs the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S. provides that while "[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located," there are exceptions:

- The official headquarters of a person located in the field is in the city or town nearest to the area where the majority of the person's work is performed, or such other city, town, or area designated by the agency head provided that the designation is in the best interests of the agency and not for the convenience of the employee.
- When any state employee is stationed in a city or town for a period of over 30 continuous workdays, that city or town is the employee's official headquarters, and he or she is not allowed per diem or subsistence, after the 30 continuous workdays have elapsed, unless that time period is extended by the agency head or his or her designee.
- An employee may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but time lost from work must be taken as annual leave and. The employee cannot be reimbursed for travel expenses other than per diem allowable had he or she remained at the temporary post. However, when an employee is temporarily assigned away from his or her official headquarters for more than 30 days, he or she can receive reimbursement for travel expenses for one round trip for each 30-day period actually taken to his or her home.[4]

Additionally, s. 112.061(1)(b)1., F.S., establishes a legislative policy that exceptions to the restrictions on reimbursements of travel and subsistence expenses should be standardized and exceptions or exemptions must explicitly reference s. 112.061, F.S.

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[2] Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf (last visited Jan. 31, 2019). *But see In re: Designation of Official Headquarters,* AOSC18-37 (Fla. July 2, 2018) (administrative order issued by Florida Supreme Court designating remote headquarters pursuant to Ch. 18-10, s. 46, Laws of Fla., the 2018 appropriations law), available at https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf (last visited April 1, 2019)..

[3] "[T]he Florida Supreme Court, comprised of its Justices, has only one "office" — the Supreme Court Building, located in the Northern District." *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at *5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). "In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an 'official duty' trip sufficient to generate venue in the other districts." *Id.* "If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here." *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at *2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate's case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate's admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee "is where the offices of the Florida Supreme Court shall be maintained.").

[4] Section 112.061(4)(a)-(c), F.S.

Section 112.061, F.S. applies to the court system. Each district court of appeal—the headquarters for which is defined by the Legislature, not the Constitution[5]—now is authorized to "designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061."[6]

Prior to district courts of appeal being authorized to establish branch headquarters, the Attorney General opined for travel and reimbursement purposes that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.[7] Notably, the opinion relied on the fact that, at that time, s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities.[8] Subsequently, the law was amended to permit a district court of appeal to "designate branch headquarters within its district for purposes of s. 112.061,"[9]

In 2018, the Implementing Bill authorized the funding of travel and subsistence expenses for justices residing outside Leon County who elected to designate a remote "headquarters" to use as their private chambers.[10] An appropriation of $209,930 recurring general revenue was made to the Supreme Court for this purpose in the Fiscal Year 2018-19 General Appropriations Act.

Certification of Need for Additional Judges

Article V, section 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.[11] The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.

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[5] Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).
[6] Section 35.05(2), F.S.
[7] Op. Att'y Gen. Fla. 74-132 (1974).
[8] *Id.* ("Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters "of an officer or employee assigned to an office shall be the city or town in which the office is located . . . ." (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees "located in the field" or "stationed" in another city or town, are not applicable her for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.").
[9] Section 35.05(2), F.S. Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus. However, the Second District's clerk's office is at the official headquarters in Lakeland. *See* Florida Second District Court of Appeal, http://www.2dca.org/Directions/tampa.shtml (last visited Jan. 31, 2019).
[10] *See* Ch. 18-10, s. 46, Laws of Fla*; In re: Designation of Official Headquarters*, Fla. Admin. Order. No. AOSC18-37 (July 2, 2018) (administrative order issued by Florida Supreme Court designating remote headquarters), available at https://www.floridasupremecourt.org/content/download/421872/4557988/AOSC18-37.pdf.
[11] Article V, section 9 of the Florida Constitution states:
Determination of number of judges.—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective

The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.[12] These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

(i) The availability and use of county court judges in circuit court.
(ii) The availability and use of senior judges to serve on a particular court.
(iii) The availability and use of magistrates and hearing officers.
(iv) The extent of use of alternative dispute resolution.
(v) The number of jury trials.
(vi) Foreign language interpretations.
(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
(viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
(ix) The availability and use of case-related support staff and case management policies and practices.
(x) Caseload trends.[13]

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system.[14] Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit "feels are required."[15] Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2019-2020 fiscal year.[16]

Problem-Solving Courts

In 1989, Florida started problem-solving court initiatives by creating the first drug court in the

only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

[12] Fla. R. Jud. Adm. 2.240(b)(1)(A).
[13] Fla. R. Jud. Admin. 2.240(b)(1)(B).
[14] Fla. R. Jud. Admin. 2.240(c).
[15] Fla. R. Jud. Admin. 2.240(d).
[16] *In Re: Certification of Need for Additional Judges*, S.Ct. No. SC18-1970. https://www.floridasupremecourt.org/content/download/425472/4585604/file/sc18-1970.pdf.

United States in Miami-Dade County. Other types of problem-solving court dockets subsequently followed using the drug court model and were implemented to assist individuals with a range of problems such as drug addiction, mental illness, domestic violence, and child abuse and neglect.[17]

Florida's problem-solving courts address the root causes of an individual's involvement with the justice system through specialized dockets, multidisciplinary teams, and a nonadversarial approach. Offering evidence-based treatment, judicial supervision, and accountability, problem-solving courts provide individualized interventions for participants, thereby reducing recidivism and promoting confidence and satisfaction with the justice system process.[18]

Veterans' Courts for Criminal Offenders

Veterans' courts are problem-solving courts, modeled after drug courts, which are aimed at addressing the root causes of criminal behavior.[19] The purpose of veterans' courts is to divert eligible defendants who are veterans or servicemembers into treatment programs for military-related conditions or war-related trauma, either before trial or at sentencing. Veterans' courts consider whether an individual's military-related condition, such as post-traumatic stress disorder, mental illness, traumatic brain injury, or substance abuse, can be addressed through a program specifically designed to serve the individual's needs.[20]

Veterans' courts implement the 10 key components required of drug courts[21] in Florida:
- Integration of alcohol, drug treatment, and mental health services into justice system case processing;
- Nonadversarial approach;
- Early identification of eligible participants;
- Continuum of services;
- Alcohol and drug testing for abstinence;
- Coordinated strategy for responses to participants' compliance;
- Ongoing judicial interaction;
- Monitoring and evaluation for program effectiveness;
- Interdisciplinary education; and
- Partnerships with stakeholders.[22]

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[17] The most common problem-solving courts in Florida are drug courts, mental health courts, veterans courts and early childhood courts. Florida Courts, Office of Court Improvement, Problem-Solving Courts, available at https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts (last visited April 1, 2019).
[18] *Id*.
[19] Florida Courts, *Problem-Solving Courts*, available at http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/ (last visited April 1, 2019).
[20] Section 394.47891, F.S.
[21] Section 397.334(4), F.S.
[22] *See* n. 3, *supra*, noting that "[t]he components of veterans courts, from The Ten Key Components of Veterans Treatment Court, Justice for Vets (a division of the National Association of Drug Court Professionals)[.]" *See also* Justice for Vets, *The Ten Key Components of Veterans Treatment Courts*, available at https://justiceforvets.org/wp-content/uploads/2017/02/The-Ten-Key-Components-of-Veterans-Treatment-Courts.pdf (last visited April 1, 2019).

Significantly, veterans' courts involve not only nonadversarial cooperation among "traditional partners found in drug courts, such as the judge, state attorney, public defender, case manager, treatment provider, probation, and law enforcement[,]" but also cooperation with "representatives of the Veterans Health Administration (VHA) and the Veterans Benefit Administration as well as State Department of Veterans Affairs, Vet Centers, Veterans Service Organizations, Department of Labor, volunteer veteran mentors, and other veterans support groups."[23] Veterans' courts are also able to "leverage resources available from the U.S. Department of Veterans Affairs" to provide treatment and other services to veterans and servicemembers.[24]

Florida's Veterans' Courts

In 2012, the Florida Legislature passed the "T. Patt Maney Veterans' Treatment Intervention Act."[25] The Act created the military veterans and servicemembers court program,[26] better known as veterans' courts.[27] Specifically, the Act authorizes the chief judge of each judicial circuit to establish a veterans' court program to serve the special needs of eligible veterans[28] and active duty servicemembers[29] who are:

- Suffering a military-related condition, such as mental illness, traumatic brain injury, or substance abuse; and
- Charged with or convicted of a criminal offense.[30]

The 2012 Act also amended chapter 948, F.S., to provide when veterans and servicemembers may be eligible to participate in the veterans' court program for treatment and services. Eligible individuals may participate after being:

- Charged with a criminal misdemeanor[31] or certain felony offenses but before being convicted (pretrial intervention);[32] or
- Convicted and sentenced, as a condition of probation or community control.[33]

Pretrial Intervention Participation

Prior to placement in a program, a veterans' treatment intervention team must develop an individualized coordinated strategy for the veteran. The team must present the coordinated

[23] *See* n. 3, *supra*.
[24] *Id*.
[25] CS/CS/SB 922 (ch. 2012-159, Laws of Fla.).
[26] Section 394.47891, F.S.
[27] Florida Courts, *Veterans' Courts*, available at http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/veterans-court.stml (last visited April 1, 2019).
[28] Section 1.01(14), F.S., defines a veteran as a person who served in active military, naval, or air service who was discharged or released under honorable conditions or who later received an upgraded discharge under honorable conditions.
[29] A servicemember is defined as a person serving as a member of the United States Armed Forces on active duty or state active duty and members of the Florida National Guard and United States Reserve Forces. Section 250.01(19), F.S.
[30] *See* n. 2, *supra.*
[31] Section 948.16(2)(a), F.S., establishes the misdemeanor pretrial veterans' treatment intervention program.
[32] Section 948.08(7)(a), F.S., authorizes courts to consider veterans charged with non-disqualifying felonies for pretrial veterans' treatment intervention programs. Section 948.08(7), F.S., references the disqualifying felony offenses listed in s. 948.06(8)(c), F.S.; i.e., Section 948.06(8)(c), F.S., lists 19 disqualifying felony offenses of a serious nature, such as kidnapping, murder, sexual battery, treason, etc.
[33] Section 948.21, F.S.

strategy to the veteran in writing before he or she agrees to enter the program. The strategy is modeled after the ten therapeutic jurisprudence principles and key components for treatment-based drug court programs.[34]

During the time that the defendant is allotted participation in the treatment program, the court retains jurisdiction in the case. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court can either order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.[35]

Eligible veterans who successfully complete the diversion program may petition the court to order the expunction of the arrest record and the plea.[36]

Participation in Treatment Program while on Probation or Community Control

Veterans and servicemembers on probation or community control who committed a crime on or after July 1, 2012, and suffer from a military-related mental illness, a traumatic brain injury, or a substance abuse disorder may also qualify for treatment programs. A court may impose, as a condition of probation or community control, successful completion of a mental health or substance abuse treatment program.[37]

Current Court Statistics

According to the State Court Administrator's Office of Court Improvement, as of February 2019, there are 30 veterans' courts in Florida.[38] Additionally, the Office of Court Improvement reports that in 2017, "Florida's veterans' courts admitted 1,051 participants and graduated 593."[39]

Retail Theft

Approximately 3,000 people are currently incarcerated in the Department of Corrections (DOC) for felony theft convictions and just over 24,000 people are on state community supervision for a felony theft crime in Florida.[40] Since 2000, 37 states have increased the threshold dollar amounts

[34] Section 948.08(7)(b), F.S., requires a coordinated strategy for veterans charged with felonies who are participating in pretrial intervention programs. Section 948.16(2)(b), F.S., requires a coordinated strategy for veterans charged with misdemeanors. Section 397.334(4), F.S., requires treatment based court programs to include therapeutic jurisprudence principles and components recognized by the United States Department of Justice and adopted by the Florida Supreme Court Treatment-based Drug Court Steering Committee.
[35] Section 948.08(7)(b)-(c), F.S.
[36] *See* n. 14, *supra*.
[37] Section 948.21, F.S.
[38] Email from the Office of the State Courts Administrator, March 1, 2019 (on file with Senate Criminal and Civil Justice Appropriations Committee).
[39] *Id.*
[40] Email from Scotti Vaughan, Department of Corrections, Deputy Legislative Affairs Director, February 6, 2019 (on file with Senate Criminal Justice Committee).

for felony theft crimes.[41] 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."[42]

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.[43]

Property Theft

Section 812.014, F.S., provides that 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.[44]

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than $100.[45] First degree petit theft, a first degree misdemeanor, is theft of property valued at $100 or more but less than $300.[46] Second degree petit theft incurs greater penalties if there is a prior theft conviction: it is a first degree misdemeanor if there is one prior conviction,[47] and a third degree felony if there are two or more prior convictions.[48]

Third degree grand theft, a third degree felony,[49] is theft of:

- Property valued at $300 or more, but less than $20,000.
- Specified property including, but not limited to:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - Any commercially farmed animal,[50] a bee colony of a registered beekeeper, or aquaculture species raised at a certified aquaculture facility;

[41] 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 (last visited April 1, 2019); *See also* Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, (June 2015), available at http://www.ncsl.org/documents/cj/sentencing.pdf (last visited April 1, 2019).
[42] John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, (March 1, 2016), 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 April 1, 2019).
[43] *Id.*
[44] Section 812.014(1), F.S.
[45] 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.
[46] 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.
[47] Section 812.014(3)(b), F.S.
[48] Section 812.014(3)(c), F.S.
[49] 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.
[50] This includes any animal of the equine, avian, bovine, or swine class or other grazing animal.

  - Any fire extinguisher;
  - Citrus fruit of 2,000 or more individual pieces;
  - Any stop sign;
  - Property taken from a designated, posted construction site;[51] and
- Property from a dwelling or its unenclosed curtilage if the property is valued at $100 or more, but less than $300.[52]

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.[53] 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 also amended, including the thresholds, in 1996.[54] Using the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index Inflation Calculator, the inflation-adjusted value of the $300 felony retail threshold that became effective July 1, 1986, is $692.54, as of February 2019. The February 2019 inflation-adjusted value of $300 since October 1, 1996 (the date the grand theft provisions relating to a dwelling and its enclosed curtilage became effective), is $479.04.[55]

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.

Retail theft is a third degree felony if the theft involves property valued at $300 or more and the person:
- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense;
- Commits theft from more than one location within a 48-hour period;[56]
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.[57]

[51] Section 812.014(2)(c), F.S.
[52] Section 812.014(2)(d), F.S.
[53] Chapter 86-161, s. 1, L.O.F., which became effective on July 1, 1986.
[54] Chapter 96-388, s. 49, L.O.F., which became effective on October 1, 1996.
[55] Consumer Price Index Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics available at https://www.bls.gov/data/inflation_calculator.htm (last visited April 1, 2019).
[56] In the first two instances, the amount of each individual theft is aggregated to determine the value of the property stolen. Section 812.015(8)(a) and (b), F.S.
[57] Section 812.015(8), F.S.

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 property has a value in excess of $3,000.[58] 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 agency.[59]

The threshold for a third degree felony retail theft was created and set by the Legislature in 2001.[60]

Reclassification of Theft Offenses – Property and Retail Theft

Certain theft offenses are reclassified to the next higher degree offense if the person committing the offense has previous theft convictions. A petit theft offense is reclassified to a third degree felony, if the person has two previous convictions of any theft.[61] A third degree felony retail theft offense is reclassified to a second degree felony if the person has a previous retail theft in violation of s. 812.015(8), F.S.[62]

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.[63]

Dealing in Stolen Property

A person who traffics in, or attempts to traffic in stolen property, is guilty of a second degree felony.[64] A person who initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in the stolen property is guilty of a first degree felony.[65]

III. Effect of Proposed Changes:

Headquarters of Supreme Court Justices

Section 1 of the bill creates s. 25.025, F.S., requiring that, upon the request of any justice residing outside of Leon County, the Chief Justice of the Florida Supreme Court shall:

- Coordinate and designate a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice's district as his or her official headquarters to serve as the justice's private chambers; and

[58] Section 812.015(9), F.S.
[59] Section 812.015(2), F.S. In July 2001, $300 dollars had the same buying power as $427.23 dollars did in February 2019.
[60] Chapter 01-115, s. 3, L.O.F.
[61] Section 812.014(3)(c), F.S.
[62] Section 812.015(9)(a), F.S.
[63] *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).
[64] Section 812.019(1), F.S.
[65] Section 812.019(2), F.S.

- Reimburse the justice for travel and subsistence while in Tallahassee on court business, to the extent funding is available.

The Supreme Court and a county may enter into an agreement to establish private chambers at the county courthouse for a justice, but a county is not required to provide space for a justice. Additionally, the Supreme Court may *not* use state funds to lease space in a district court of appeal courthouse, county courthouse, or other facility for use as private chambers.

Certification of Need for Additional Judges

The bill amends s. 26.031, F.S., to add one circuit court judgeship to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties, and one circuit court judgeship to the Twelfth Judicial Circuit Court, which includes Manatee and Sarasota Counties. The newly created judgeships will be filled by the Governor from among nominees by the appropriate judicial nominating commission.

Problem-Solving Courts

The bill creates s. 43.51, F.S., requiring the Office of the State Courts Administrator to provide an annual report to the President of the Senate and the Speaker of the House of Representatives detailing the number of participants in each problem-solving court for each fiscal year the court has been operating. The report must also include the types of services provided, the source of funding for each court, and provide performance outcomes.

The bill amends s. 394.47891, F.S., to require the chief judge of each judicial circuit to establish a Veterans' court. Currently, the statute permits the establishment of veterans' courts and 16 of the 20 judicial circuits have done so.

Property Theft

The bill amends s. 812.014(2)(c), F.S., increasing the minimum threshold amounts for a third degree felony grand theft from $300 to $750. For property taken from a dwelling or enclosed curtilage, the theft threshold amounts specified in s. 812.014(2)(d), F.S., are modified from $100 or more, but less than $300, to $750 or more, but less than $5,000. The first degree misdemeanor petit theft threshold amount specified in s. 812.012(2)(c), F.S., is modified from $100 or more, but less than $300, to less than $750.

The bill also amends s. 812.014(2)(c), F.S., authorizing a fine of up to $10,000 for the theft of commercially farmed animals rather than a mandatory fine of $10,000.

Retail Theft

The bill amends s. 812.015(8), F.S., to increase the property value of third degree felony retail theft from $300 or more, to $750 or more. Section 812.015(a) provides for the aggregation of the value of property stolen by a person who acts in concert with, or who coordinates with others. The bill requires that multiple acts of retail theft that occur within a 90-day period by an individual or in concert with one or multiple persons must be aggregated to determine the value of property stolen. The bill increases the 48-hour time period that that theft must have occurred in to aggregate the property value stolen within 90 days.

The bill amends s. 812.015(9), F.S., to specify that the value of the stolen property may be aggregated over a 90-day period. However, the amount aggregated must be in excess of $3,000, as required in current law.

The bill also provides that a person who conspires with another to commit retail theft with the intent to sell stolen property or for other gain, and who subsequently places the control of the property with another person in exchange for consideration commits a third degree felony. If the conspiracy to commit retail theft is in excess of $3,000, aggregated over a 90-day period, then the offense is a second degree felony.

The bill provides for the amount of multiple instances of retail theft within a 90-day period to be aggregated. If multiple instances of retail theft are committed in more than one county within a 90-day period they may be aggregated and must be prosecuted by the Office of the Statewide Prosecutor.

Dealing in Stolen Property - Fraudulent Returns

The bill creates s. 812.019(3), F.S. to provide that a person who receives, possesses, or purchases merchandise or stored-value cards from a fraudulent return with knowledge the items were stolen commits a third degree felony.

Conforming Changes to the Criminal Punishment Code

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill. The bill reenacts ss. 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.0155, 812.14, 893.138, and 985.11 incorporating changes made by the act.

Section 1 (supreme court justices' travel) is effective July 1, 2019; the remaining sections of the bill are effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Travel and Subsistence Costs

The cost of travel reimbursement for justices who have private chambers outside Leon County in his or her district of residence may be paid only to the extent appropriated funds are available. An appropriation of $209,930 recurring general revenue was made to the Supreme Court specifically for this purpose in the Fiscal Year 2018-19 General Appropriations Act. SB 2500, First Engrossed, the Senate's proposed 2019-20 General Appropriations Bill, continues the funding for this purpose.[66]

New Circuit Court Judgeships

When circuit court judgeships are created, other costs are necessary in addition to the salary and benefits for each new judge. The recurring costs include the salary and benefits of a judicial assistant and a law clerk. The courts use a methodology of one law clerk for every three circuit judges to determine their need for law clerks.

The cost to fund two circuit court judgeships, two judicial assistants, and two law clerks is:
$794,782 in salaries and benefits (recurring)
$ 30,666 in expense (non-recurring)
$ 1,218 for Human Resource Services (recurring)
$826,666

Article V, s. 14(c) of the Florida Constitution and s. 29.008, F.S., require counties to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties would incur an indeterminate amount of costs associated with

[66] SB 2500, First Engrossed, Specific Appropriation 3210, p. 389, https://www.flsenate.gov/Session/Bill/2019/2500/BillText/e1/PDF (last visited on April 4, 2019).

providing those services to the new judges and judicial staff. SB 2500, First Engrossed, the Senate's proposed 2019-20 General Appropriations Bill, includes funding for these positions.[67]

Veterans' Courts

The expansion of veterans' courts in the four judicial circuits that do not have a veterans' court alone will not create a fiscal impact on state funds. Recurring appropriations for problem-solving courts are allocated by the TCBC.

SB 2500, First Engrossed, the Senate's proposed 2019-20 General Appropriations Bill, funds problem-solving courts through a special category appropriation in the total amount of $11,289,840.[68] Pursuant to a proviso associated with the appropriation for problem-solving courts, the TCBC must determine the allocation of funds to the circuits. Funds from this specific appropriation must be matched by local government, federal government, or private funds. The matching ratio for veterans' courts is 20 percent non-state funding and 80 percent state funding. No match is required for a fiscally constrained county, as defined in s. 218.67, F.S.[69] While the TCBC determines the allocation for other problem-solving courts that the TCBC approves, the TCBC must fund the following veterans' courts in the following amounts:

- Alachua $150,000
- Clay $150,000
- Duval $200,000
- Escambia $150,000
- Leon $125,000
- Okaloosa $150,000
- Orange $200,000
- Pasco $150,000
- Pinellas $150,000.[70]

Through the TCBC, additional veterans' courts beyond those specifically listed above are funded. This bill does not mandate or provide additional funding for veterans' courts, but would require the TCBC to fund at least one Veterans' court in each judicial circuit, requiring a minimum of four new veterans' courts.

Increasing the Threshold for Theft Offenses

The bill also increases the threshold for retail and grand theft offenses. The Criminal Justice Impact Conference (CJIC) has not reviewed this bill. However, on January 8,

[67] SB 2500, First Engrossed, Specific Appropriations 3243, 3245, 3257, pp. 393, 393, and 395 respectively https://www.flsenate.gov/Session/Bill/2019/2500/BillText/e1/PDF (last visited on April 4, 2019).
[68] SB 2500, First Engrossed, Specific Appropriation 3247, p. 393, https://www.flsenate.gov/Session/Bill/2019/2500/BillText/e1/PDF (last visited on April 4, 2019).
[69] Id.
[70] SB 2500, First Engrossed, Specific Appropriation 3247, p. 394, https://www.flsenate.gov/Session/Bill/2019/2500/BillText/e1/PDF (last visited on April 4, 2019).

2018, the CJIC reviewed SB 928/HB 713 (2018), which were similar to the current bill, and estimated that the bill would have a "negative significant" prison bed impact (i.e., a decrease of more than 25 prison beds).[71]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.031, 394.47891, 812.014, 812.015, 812.019, and 921.0022.

This bill creates the following sections of the Florida Statutes: 25.025 and 43.51

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, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.0155, 812.14, 893.138, 985.11, and 1012.315.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on April 9, 2019:
The committee substitute authorizes a fine of up to $10,000 for the theft of commercially farmed animals rather than a mandatory $10,000 fine.

B. Amendments:

None.

[71] 2018 Conference Results (through February 12, 2018), CJIC, available at http://edr.state.fl.us/Content/conferences/criminaljustice/archives/index.cfm (last visited on April 1, 2019).