

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 279 Traveling Across County Lines with Intent to Commit a Felony

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Snyder

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Justice Appropriations Subcommittee	9 Y, 3 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

A burglary is a felony offense classified according to the specific circumstances of the offense. A person commits burglary by:

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are open to the public or the person's entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.

Grand theft is a felony offense generally classified based on the value or the type of property stolen. 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 use the property.

Under s. 843.22, F.S., a burglary offense is reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart (OSCR) when the person committing the burglary travels:

- Any distance with the intent to commit the burglary in a county that is not his or her county of residence; and
- For the purpose of thwarting law enforcement attempts to track stolen items.

A person whose burglary offense is reclassified under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.

CS/HB 279 amends s. 843.22, F.S., by expanding the crime of traveling across county lines with the intent to commit a burglary to also include grand theft offenses. The bill also removes the requirement that the purpose of an offender's travel be to thwart law enforcement attempts to track stolen items.

Under the bill, a burglary or a grand theft offense is reclassified and re-ranked when a person travels any distance to a county that is not his or her county of residence with the intent to commit the offense.

The Criminal Justice Impact Conference considered the bill on March 8, 2020, and determined the bill would have a positive insignificant impact on the prison population.

The bill provides an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Burglary

A person commits burglary by:¹

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are at the time open to the public or the person’s entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.²

A burglary is a felony offense classified according to the offense’s specific circumstances, as follows:

- A burglary or attempted burglary of an unoccupied structure or conveyance is a third degree felony.³
- A burglary of a dwelling, an occupied structure or conveyance, or an authorized emergency vehicle is a second degree felony.⁴
- A burglary is a first degree felony when an offender:⁵
 - Commits an assault or a battery;
 - Becomes armed with explosives or a dangerous weapon within the premises he or she is burglarizing;
 - Enters a dwelling or structure and:
 - Causes damage to a dwelling or structure with a motor vehicle; or
 - Causes damage to a dwelling or structure over \$1,000.

Under ch. 810, F.S., “conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.⁶

Traveling Across County Lines with Intent to Commit a Burglary

In 2014, in response to an increase in burglaries committed by individuals intentionally traveling to a county in which they did not reside with the intent to commit the offense, the Legislature created the crime of traveling across county lines with intent to commit a burglary.⁷ Under s. 843.22, F.S., a burglary offense is reclassified one degree higher and re-ranked one level above the ranking specified in the OSRC when the offender committing the burglary travels:

- Any distance with the intent to commit the burglary in a county that is not his or her county of residence; and
- For the purpose of thwarting law enforcement’s attempts to track items stolen in the burglary.

¹ S. 810.02, F.S.

² “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

³ S. 810.02(4), F.S.

⁴ S. 810.02(3), F.S.

⁵ S. 810.02(2), F.S.

⁶ S. 810.011(3), F.S.

⁷ Ch. 2014-201, Laws of Fla.; Ch. 843.22, F.S.; See also Sascha Cordner, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: ‘Pillowcase Burglars,’* WFSU, (Dec. 18, 2013) <https://news.wfsu.org/state-news/2013-12-18/sheriff-enlists-legislative-help-to-crack-down-on-growing-problem-pillowcase-burglars> (last visited Mar. 9, 2021).

A person's "county of residence" means the county in which he or she resides within Florida, and evidence of a person's county of residence may include, but is not limited to:

- The address on the person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which the person's motor vehicle is registered;
- The county in which the person is enrolled in an educational institution; and
- The county in which the person is employed.

A person whose burglary offense is reclassified under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.⁸

While s. 843.22, F.S., was intended to discourage individuals from crossing county lines with the intent to commit burglaries and to enhance penalties for those that do, the Florida Department of Law Enforcement's Computerized Criminal History Data indicates that from January 1, 2014, through December 21, 2020, no person has been prosecuted for violating s. 843.22, F.S., and only one arrest charging a violation was made.⁹ Because current law requires proof that an offender traveled with the intent to commit a burglary in a county that is not his or her county of residence and that the purpose of his or her travel was to thwart law enforcement attempts to track stolen items, law enforcement and prosecutors may currently experience obstacles charging the offense due to insufficient evidence to prove all elements of the crime.

Theft

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 use the property.

Section 812.014, F.S., defines theft offenses and generally classifies the offense based on the value or type of property stolen.¹⁰ The offense levels for grand theft crimes are classified as follows:

Property Value/Type	Offense Level
≥ \$100,000 or a semitrailer deployed by law enforcement officer; property stolen while causing other property damage; or cargo valued ≥ \$50,000.	First Degree Felony
≥ \$20,000, but < \$100,000 or cargo valued < \$50,000; emergency medical equipment; or law enforcement equipment from authorized emergency vehicle.	Second Degree Felony
≥ \$10,000, but < \$20,000 or specified items (such as a firearm or motor vehicle)	Third Degree Felony
≥ \$5,000, but < \$10,000	Third Degree Felony
≥ \$750, but < \$5,000	Third Degree Felony
≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage ¹¹ of a dwelling	Third Degree Felony

Current law does not provide a reclassification for traveling across county lines to commit a theft.

Criminal Punishment Code – Offense Severity Ranking Chart

⁸ S. 903.046(2)(l), F.S.

⁹ However, Florida Statute is an optional field in the arrest data; as such, 11.64% of arrests in the CCH data for the time period reported do not include a statutory reference. Email from Bobbie Smith, Legislative Analyst, Florida Department of Law Enforcement, RE: Crime Stats for s. 843.22 (Feb. 19, 2021).

¹⁰ Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. Ch. 812.014, F.S.

¹¹ "Unenclosed curtilage of a dwelling" means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

Felony offenses subject to the Criminal Punishment Code¹² are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (level 1) to most severe (level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.¹³ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.¹⁴ A person may also accumulate points for factors such as victim injury, violating a community sanction, and certain sentencing multipliers.¹⁵ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.¹⁶

Effect of Proposed Changes

CS/HB 279 amends s. 843.22, F.S., by expanding the crime of traveling across county lines with the intent to commit a burglary to also include grand theft offenses. To increase enforcement, the bill removes the element of the crime requiring proof that the purpose of an offender's travel be to thwart law enforcement attempts to track stolen items.

As such, under the bill, a burglary or grand theft offense is reclassified to the next higher degree and re-ranked one level above the ranking specified in the OSRC when a person travels any distance to a county that is not his or her county of residence with the intent to commit an offense.

A person whose burglary or grand theft offense is reclassified under the bill cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.

The bill provides an effective date of October 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amending s. 843.22, F.S., relating to traveling across county lines with intent to commit a burglary.

Section 2: Providing an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹² All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹³ S. 921.0022, F.S.

¹⁴ Ss. 921.0022 and 921.0024, F.S.

¹⁵ S. 921.0024(2), F.S.

¹⁶ *Id.*

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on March 8, 2021, and determined it would have a positive insignificant¹⁷ impact on the prison population.¹⁸

Per the Florida Department of Law Enforcement, there has been one arrest since 2014 in which the offense was elevated for committing a burglary as suggested in the bill. The number of grand theft offenses that may be impacted by the bill is unknown.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁷ Positive Insignificant impact indicates a potential increase of 10 or fewer prison beds.

¹⁸ Criminal Justice Impact Conference, *HB 279 – Traveling Across County Lines with Intent to Commit a Felony*, March 8, 2021, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB279.pdf>, last accessed: March 10, 2021.

¹⁹ *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Criminal Justice and Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed:

- Drug trafficking from the listed felony offenses which are reclassified and re-ranked.
- The requirement of proof that the purpose of an offender's travel is to thwart law enforcement attempts to track stolen items.

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