

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 279 Enhanced Penalties for Criminal Offenses;

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

TIED BILLS: **IDEN./SIM. BILLS:** SB 1354

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	18 Y, 3 N, As CS	Frost	Kramer

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 - After permission to remain is withdrawn, with the intent to commit an offense therein; or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 type of property stolen. A person commits theft by knowingly obtaining or using, or endeavoring to obtain or use, the property of another with intent to, either temporarily or permanently: deprive the owner of a right to or benefit from the property; or appropriate the property to his or her own use or 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 (OSRC) 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 the purpose of his or her travel is to thwart 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/CS/HB 279 provides enhanced penalties for criminal offenses by amending s. 810.02(2), F.S., to re-rank a burglary offense one level above the ranking specified in the OSRC if, during the course of committing the offense, an offender enters any dwelling, structure, or conveyance located on property owned by any law enforcement agency or fire department. As such, the bill may increase an offender's criminal scoresheet sentencing points for an offense such as burglarizing the personal vehicle of a law enforcement officer or firefighter when the vehicle is parked on property owned by a law enforcement agency or fire department.

The bill also amends s. 843.22, F.S., by removing the current reclassification for an offense of traveling to commit a burglary, but leaving intact the re-ranking on the OSRC, which subjects an offender to increased criminal scoresheet sentence points. The bill expands the scope of conduct that is re-ranked when an offender travels across county lines with the intent to commit an offense to also include grand theft offenses, and removes the current requirement that an offender's travel be for the purpose of thwarting law enforcement attempts to track stolen items. A person who travels any distance to a county that is not his or her county of residence with the intent to commit a burglary or grand theft offense may not be released on bail until a first appearance hearing.

The Criminal Justice Impact Conference considered HB 279 on March 8, 2021, and determined the bill would have a positive insignificant impact on the prison population. However, the differences in CS/CS/HB 279 are unlikely to significantly change the bill's 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., a:

- “Structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof;⁶
- “Dwelling” means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof;⁷ and
- “Conveyance” includes any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.⁸

Traveling Across County Lines with Intent to Commit a 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 However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of the absence of a wall or roof. S. 810.011(2), F.S.

⁷ However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof. S. 810.011(1), F.S.

⁸ “To enter a conveyance” includes taking apart any portion of the conveyance. However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist. S. 810.011(3), F.S.

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 a reclassification for traveling across county lines with intent to commit a burglary.⁹ 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 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.

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.¹⁰

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.¹¹ 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 reclassification.

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.

⁹ 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. 29, 2021).

¹⁰ S. 903.046(2)(l), F.S.

¹¹ 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).

Section 812.014, F.S., defines theft offenses and generally classifies the offense based on the value or type of property stolen.¹² 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 ¹³ 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

Felony offenses subject to the Criminal Punishment Code¹⁴ are listed in a single offense severity ranking chart (OSRC), 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.¹⁵ 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.¹⁶ A person may also accumulate points for factors such as victim injury, violating a community sanction, and certain sentencing multipliers.¹⁷ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.¹⁸

Effect of Proposed Changes

CS/CS/HB 279 amends s. 810.02(2), F.S., to provide that a burglary offense is re-ranked one level about the ranking specified on the OSRC if, during the course of committing the offense, an offender enters any dwelling, structure, or conveyance located on property owned by any law enforcement agency or fire department. As such, the bill may increase an offender’s criminal scoresheet sentencing points for an offense such as burglarizing the personal vehicle of a law enforcement officer or firefighter when the vehicle is parked on property owned by a law enforcement agency or fire department.

The bill amends s. 843.22, F.S., to remove the current reclassification for an offense of traveling to commit a burglary, but leaves intact the re-ranking on the OSRC, which subjects an offender to increased criminal scoresheet sentence points. The bill also expands the scope of conduct that is re-ranked when an offender travels across county lines with the intent to commit a burglary to also include grand theft offenses. The bill may increase enforcement and the ability to charge such offenses by removing the current requirement that an offender’s travel be for the purpose of thwarting law enforcement attempts to track stolen items.

¹² 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.

¹³ “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.

¹⁴ 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.

¹⁵ S. 921.0022, F.S.

¹⁶ Ss. 921.0022 and 921.0024, F.S.

¹⁷ S. 921.0024(2), F.S.

¹⁸ *Id.*

The bill amends s. 903.046(2)(l), F.S., to prohibit a person whose burglary or grand theft offense is re-ranked, rather than reclassified, under s. 843.22, F.S., from being released on bail until he or she appears for a first appearance hearing and a court determines bond.

As such, under the bill, a burglary or grand theft offense is 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, and he or she may not be released on bail until a court determines bond at a first appearance hearing.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 810.02, F.S., relating to burglary.

Section 2: Amends s. 843.22, F.S., relating to traveling across county lines with intent to commit a burglary.

Section 3: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered HB 279 on March 8, 2021, and determined it would have a positive insignificant¹⁹ impact on the prison population.²⁰ 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.²¹

At the time CJIC considered the bill, it did not include an enhanced penalty for burglarizing a dwelling, structure, or conveyance located on property owned by a law enforcement agency or fire department and did not remove the reclassification for an offense of traveling to commit a burglary or grand theft. However the changes made in the PCS are unlikely to significantly change the impact on the prison population.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

¹⁹ Positive Insignificant impact indicates a potential increase of 10 or fewer prison beds.

²⁰ Criminal Justice Impact Conference, *HB 279 – Traveling Across County Lines with Intent to*

Commit a Felony, (Mar. 8, 2021) <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB279.pdf> (last visited Mar. 29, 2021).

²¹ *Id.*

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.

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.

On March 29, 2021, the Judiciary Committee adopted a proposed committee substitute (PCS) and one amendment and reported the bill favorably as a committee substitute. The PCS and amendment:

- Retitled the bill "Enhanced Penalties for Criminal Offenses."
- Provided that a burglary offense is re-ranked one level above the ranking on the OSRC for the offense committed if, during the course of committing the offense, an offender enters any dwelling, structure, or conveyance located on property owned by any law enforcement agency or fire department.
- Removed the current reclassification for an offense of traveling to commit a felony, but left intact that such an offense is re-ranked one level above the ranking specified on the OSRC for the offense committed.
- Provided that a person whose burglary or theft offense is re-ranked on the OSRC, rather than reclassified, because he or she traveled to commit the offense may not be released on bail until a first appearance hearing.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.