

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: CS/SB 1534

INTRODUCER: Criminal Justice Committee and Senator Boyd and others

SUBJECT: Retail Theft

DATE: January 31, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1534 amends s. 812.015, F.S., the retail theft statute, to create new third degree felony and second degree felony retail theft crimes based on multiple retail thefts occurring in a limited time period in different merchant locations. Specifically, the bill amends the statute to provide that a person commits retail theft, a third degree felony, if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.

The bill also amends the statute to provide that a person commits a second degree felony if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

The bill also amends s. 921.0022, F.S., the offense severity level ranking chart of the Criminal Punishment Code, to rank the new third degree felony retail theft offense as a level 5 offense and rank the new second degree felony retail theft offense as a level 6 offense.

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2022.

II. Present Situation:

Organized Retail Crime and "Boosting"

Organized retail crime (or ORC theft) is "a premeditated burglary that involves multiple offenders who operate in different specified roles or positions. These crime rings often hit multiple stores in one run, collecting a car full of stolen goods that are sold or 'returned' for store credit or even cash, depending on the return policy. Oftentimes, these items are sold via online marketplaces, which makes it nearly impossible to trace the criminal activity back to the seller."¹

"The ... most common form of organized retail crime is referred to as *boosting*." "Boosting" is "the basic act of walking into a store and stealing item(s) without being caught. This can be done in any number of ways, from pocketing smaller items to simply walking out the front door with a cart full of big-ticket merchandise and enough confidence in your step that nobody questions you."²

According to the Florida Attorney General's Office, there are many challenges to prosecuting boosting under existing theft laws which generally require proof of the value of the property stolen.

There are limited statutes which law enforcement and prosecutors can charge boosters under. The traditional theft statute, s. 812.014, the organized retail theft statute, s. 812.015, and the scheme to defraud statute, s. 817.034, all require evidence of value.

In order to prove value, the law enforcement officer and prosecutor must know and prove the exact items stolen. While this level of proof is clear when someone is detained and found with the merchandise, when there are limited items stolen and clear view, or when merchandise is later recovered, such proof is exceedingly difficult to meet when the merchandise leaves the store.

If there is not a clear camera view of the exact items stolen, a prosecutor can only include the lowest value item within the area of the item stolen. Stores keep items of largely varying value within arm's reach of other items of similar type. A multiple hundred dollar item can be kept right next to an item worth less than \$20.00.

Using the item described above, if a defendant steals five \$200 items (totaling \$1,000) they could be charged with only stealing \$100 of merchandise if the item is not clearly

¹ Storm Suttter, *Organized Retail Crime Methods and How to Prevent Them* (Sep. 28, 2021), LiveView Technologies, available at <https://www.lvt.com/company/about-us> (last visited on Jan. 20, 2022).

² *Id.*

visible on video. In both situations, it is undisputed that five items were stolen; the exact item stolen is what would be contested.

The investigations into boosting activity can take upwards of a year or longer to conduct. First, retail loss prevention must watch the boosting activity and identify the exact items stolen. Law enforcement must then review the video to ensure the items are detailed by retail loss prevention correctly and complete an affidavit. A prosecutor must then review the videos and the affidavit to make sure the prosecutor has a good faith basis to file charges. This is a timely process. During this investigative process, the boosting activity continues across the State.

Large scale boosters can enter many stores within a small period of time and boost many items during each theft. Reviewing the video files to check for items stolen can take many hours at each step of the process. Each item needs to be readily apparent from the video.

Some retailers have the ability to verify inventory logs to check for missing merchandise, to prove the items stolen. However, in order to successfully prove the items stolen with this method, there must be evidence from the point of the first inventory to the point of the next inventory of legitimate sales, restocking, and/or proving no other persons stole during that time. Depending on the time between inventory checks, this could be multiple days of video to review by the loss prevention, then law enforcement, then the prosecutor.³

Organized Retail Crime –National Trends

The National Retail Federation (NRF) reports that “[o]rganized retail crime now costs retailers an average of \$700,000 per \$1 billion in sales, and three-fourths of retailers saw an increase in ORC in 2020....”⁴

According to the *National Retail Security Survey 2021*, a NRF survey of retail loss prevention professionals that covers national retail security issues, including external retail crime, organized retail crime is a growing threat. The survey reports: “About 69% of retailers said they had seen an increase in ORC activity over the past year. They cited reasons such as COVID-19, policing, changes to sentencing guidelines and the growth of online marketplaces for the increase in ORC activity.”⁵ Further, “[r]etailers report these gangs are more aggressive and violent than in years past.”⁶

³ Summary of boosting issue and legislation provided to staff of the Senate Committee on Criminal Justice on Jan. 18, 2022 (on file with the Senate Committee on Criminal Justice).

⁴ Craig Guillot, *Organized retail crime remains a growing threat* (Nov. 18, 2021), National Retail Federation, available at <https://nrf.com/blog/organized-retail-crime-remains-growing-threat> (last visited on Jan. 20, 2022).

⁵ *National Retail Security Survey 2021*, National Retail Federation, at p. 10, available at <https://cdn.nrf.com/sites/default/files/2021-08/2021%20National%20Retail%20Security%20Survey%20updated.pdf> (last visited on Jan. 20, 2022).

⁶ *Id.*

Florida Organized Retail Crime Exchange (FORCE)

On December 2, 2021, Florida Attorney General Ashley Moody announced the creation of the Florida Organized Retail Crime Exchange (FORCE), which consists of a task force and an interactive statewide database.⁷ The task force will be composed of law enforcement personnel, prosecutors, and retailers⁸ who “will meet regularly to discuss trends, share criminal intelligence and coordinate investigations.”⁹ The statewide database, which will be operated by the Attorney General’s Office and the Florida Retail Federation, will “spot trends, identify suspects and take down massive organized retail theft rings.”¹⁰ Law enforcement and retailers that complete specialized training will have access to it.¹¹

Attorney General Moody also reported that since taking office in 2019, statewide prosecutors have “filed nearly 60 cases involving more than 250 individuals suspected of organized retail theft or crimes related to organized retail theft.”¹²

Criminal Punishment Code

The Criminal Punishment Code¹³ (Code) is Florida’s primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁴ Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁵ Absent mitigation,¹⁶ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁷

⁷ News Release, *VIDEO: Attorney General Moody Launches FORCE to Protect Floridians Against Retail Theft Crime Sprees Plaguing Cities in Other States* (Dec. 2, 2021), Attorney General’s Office (on file with the Senate Committee on Criminal Justice).

⁸ *Id.*

⁹ Pat Raia, *Database aims to thwart retail theft rings before they organize here* (Dec. 5, 2021), Hernando Sun, available at <https://www.hernandosun.com/2021/12/05/database-aims-to-thwart-retail-theft-rings-before-they-organize-here/> (last visited on Jan. 20, 2022).

¹⁰ See footnote 9, *supra*.

¹¹ *Id.*

¹² *Id.*

¹³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁴ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁵ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁶ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁷ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

Theft Statute (s. 812.014, F.S.)

Section 812.014(1), 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.

The statute punishes “grand theft” and “petit theft.”¹⁸ Grand theft penalties, which are more severe than petit theft penalties, may be triggered by theft of an item listed in the statute, such as a fire extinguisher, regardless of the value of that listed item.¹⁹ However, more typically, grand theft is theft of property valued at \$750 or more. The degree and punishment of grand theft escalates based on the value of the stolen property. If the property stolen is valued at:

- \$750 or more, but less than \$5,000, it is grand theft of the third degree and a Level 2 third degree felony;²⁰
- \$5,000 or more, but less than \$10,000, it is grand theft of the third degree and a Level 3 third degree felony;²¹
- \$10,000 or more, but less than \$20,000, it is grand theft of the third degree and a Level 4 third degree felony;²²
- \$20,000 or more, but less than \$100,000, it is grand theft of the second degree and a Level 6 second degree felony;²³ and
- \$100,000 or more, it is grand theft of the first degree and a Level 7 first degree felony.²⁴

Additionally, s. 812.014(2)(d), F.S., provides that theft of property valued at \$100 or more, but less than \$750, is grand theft of the third degree, a Level 2 third degree felony,²⁵ if the property was taken from a dwelling or its unenclosed curtilage.

Petit theft is generally theft of property valued at less than \$750 or property without a specific monetary value that is not listed in s. 812.014(2), F.S. Except as provided in s. 812.014(2)(d),

¹⁸ Grand theft also includes: grand theft in which a motor vehicle is used as an instrumentality in committing the theft (s. 812.014(2)(a)3.a., F.S.); theft of a semitrailer deployed by a law enforcement officer; and theft of cargo, emergency medical equipment, and law enforcement equipment in a specified property value range (s. 812.014(2)(a)1. and 2., (2)(b)2., 3., and 4., F.S.). Further, penalties for grand theft are enhanced if committed after a declaration of an emergency and facilitated by the emergency and during a riot or an aggravated riot (s. 812.014(2)(b) and (c), F.S.).

¹⁹ See s. 812.014(2)(c)4.-13., F.S.

²⁰ Sections 812.014(2)(c)1. and 921.0022(3)(b), F.S. A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

²¹ Sections 812.014(2)(c)2. and 921.0022(3)(c), F.S.

²² Sections 812.014(2)(c)3. and 921.0022(3)(d), F.S.

²³ Sections 812.014(2)(b)1. and 921.0022(3)(f), F.S. A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁴ Sections 812.014(2)(a)1. and 921.0022(3)(g), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000. When specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

²⁵ Section 921.0022(3)(b), F.S.

F.S., if the property stolen is valued at \$100 or more, but less than \$750, the offender commits petit theft of the first degree, which is a first degree misdemeanor.²⁶ Theft of any property not specified in s. 812.014(2), F.S., is petit theft of the second degree, which is a second degree misdemeanor.²⁷ However, a person who commits petit theft and who has previously been convicted of any theft commits a first degree misdemeanor²⁸ or a Level 1 third degree felony if there are 2 or more previous theft convictions.²⁹

A person commits a Level 4 second degree felony if that person individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing theft under s. 812.014, F.S., where the stolen property has a value in excess of \$3,000.³⁰

Retail Theft Statute (s. 812.015, F.S.)

While theft is generally punished in s. 812.014, F.S., and thefts from retailers can be punished under that statute, s. 812.015, F.S., is specifically directed at punishing “retail theft,”³¹ which the statute defines as “the taking possession of or carrying away of merchandise,³² 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 merchant³³ of possession, use, benefit, or full retail value.”³⁴

Section 812.015(8), F.S., provides that it is a third degree felony to commit retail theft, if the property stolen is valued at \$750 or more, and the person:

- Individually commits retail theft, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period to determine the value of the property stolen;
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in

²⁶ Section 812.014(2)(e), F.S. A first degree misdemeanor is punishable by not more than one year in a county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

²⁷ Section 812.014(3)(a), F.S. A second degree misdemeanor is punishable by not more than 60 days in a county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁸ Section 812.014(3)(b), F.S.

²⁹ Section 812.014(3)(c) and 921.0022(3)(a), F.S.

³⁰ Sections 812.014(6) and 921.0022(3)(b), F.S.

³¹ In addition to punishing retail theft, the statute does the following: requires specified fines or public service for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency (s. 812.015(2), F.S.); authorizes a merchant and others to take an offender into custody and detain the offender when there is probable cause (s. 812.015(3), F.S.); authorizes arrest without a warrant in specified circumstances (s. 812.015(4), F.S.); provides a liability shield for taking a person into custody or arresting a person in accordance with requirements of the statute (s. 812.015(5), F.S.); punishes resisting a law enforcement officer and others recovering property in specified circumstances (s. 812.015(6), F.S.); punishes possession or use of any antishoplifting or inventory control device countermeasure (s. 812.015(7), F.S.); and requires the Office of Program Policy Analysis and Government Accountability to perform a study every five years to determine the appropriateness of the monetary threshold amounts included in the statute (s. 812.015(11), F.S.). None of these provisions are addressed in the bill, and therefore, they are not discussed further in this analysis.

³² “Merchandise” means “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” Section 812.015(1)(a), F.S.

³³ “Merchant” means “an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.” Section 812.015(1)(b), F.S.

³⁴ Section 812.015(1)(d), F.S.

the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the stolen property;

- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which the amount of each individual theft is aggregated to determine the value of the property stolen;
- 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.

All of the retail theft offenses in s. 812.015(8), F.S, are Level 5 third degree felonies,³⁵ except for the conspiracy offense, which is a Level 3 third degree felony.³⁶

Section 812.015(9), F.S., provides that it is a second degree felony if the person:

- Violates s. 812.015(8), F.S., and has previously been convicted of a violation of this subsection;
- 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, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000; or
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.

All of the retail theft offenses in s. 812.015(9), F.S, are Level 6 second degree felonies,³⁷ except for the conspiracy offense, which is unranked in the Code chart, and therefore defaults to Level 4 pursuant to s. 921.0023(2), F.S.

Section 812.015(10), F.S., provides that if a person commits retail theft in more than one judicial circuit within a 30-day period, the value of the stolen property resulting from the thefts in each judicial circuit may be aggregated, and the person must be prosecuted by the Office of the Statewide Prosecutor in accordance with s. 16.56, F.S.

III. Effect of Proposed Changes:

The bill amends s. 812.015, F.S., the retail theft statute, to create new third degree felony and second degree felony retail theft crimes based on multiple retail thefts occurring in a limited time period in different merchant locations. Specifically, the bill amends the statute to provide that a person commits retail theft, a third degree felony, if the person individually, or in concert with

³⁵ Section 921.0022(3)(e), F.S.

³⁶ Section 921.0022(3)(c), F.S.

³⁷ Section 921.0022(3)(g), F.S.

one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.

The bill also amends the statute to provide that a person commits a second degree felony if the person individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.

The bill also amends s. 812.015, F.S., to:

- Specify that a second degree felony retail theft violation includes not only a current third degree felony retail theft violation coupled with a prior third degree felony retail theft violation but a current third degree felony retail theft violation coupled with a prior second degree felony retail theft violation. This change is consistent with the approach to enhance punishment for repeat retail theft.
- Restructure the retail theft offense so that it is clearer that this element is an element of each specific retail theft act described in the statute. This a technical change and not a substantive change since property value is an element of each specified act and the amendment of the statute does not in any way change the property value threshold (\$750).

The bill also amends s. 921.0022, F.S., the offense severity level ranking chart of the Code, to rank the new third degree felony retail theft offense as a level 5 offense and rank the new second degree felony retail theft offense as a level 6 offense.

The bill takes effect on October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent the new retail theft crimes reduces retail theft, especially large retail theft operations, the bill would reduce loss of inventory with a cost savings to retailers, which may be substantial.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of prison bed impact, if any, of legislation has not yet reviewed the bill. However, the EDR preliminarily estimates that bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). Additionally, the EDR provided the following information regarding its estimate:

Existing retail theft felonies require that stolen property is worth \$750 or more (over a thirty day period), whereas these new felonies only require a specific number of items stolen (over a thirty day period), with at least two thefts occurring at different physical merchant locations. Retail theft is currently defined as “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.”

Per [Department of Corrections], in FY 18-19, there were 40 new commitments for retail theft as it is currently defined. There were 23 new commitments in FY 19-20 and 22 new commitments in FY 20-21. It is not known how many of these offenders committed offenses defined under this new language, nor is it known how many additional offenders there will be that have committed offenses as defined under this language with property valued under the \$750 threshold.³⁸

³⁸ *SB 1534 – Retail Theft (Identical HB 1511)*, Office of Economic and Demographic Research (on file with Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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 25, 2022:

The committee substitute removes a provision that excludes from these new retail theft crimes created by the bill a person's theft of one or more food items with the intent to consume such items for the sustenance of himself or herself or another person under his or her care.

- B. **Amendments:**

None.