

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 Committee on Criminal and Civil Justice

BILL: CS/SB 836

INTRODUCER: Criminal Justice Committee and Senator Powell

SUBJECT: Theft from Nonprofit Organizations

DATE: April 11, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 836 creates s. 812.0146, F.S., to reclassify the crime of theft, whenever a person is charged with committing theft from an organization that person knows or has reason to believe is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code. The crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft from a qualified organization is valued at:

- Fifty thousand dollars or more, the offender commits a first degree felony.
- Ten thousand dollars or more, but less than \$50,000, the offender commits a second degree felony.
- Three hundred dollars or more, but less than \$10,000, the offender commits a third degree felony.

A person who is convicted of theft of more than \$1,000 from an organization that the person knows or has reason to believe is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code must be ordered to make restitution to the victim and to perform up to 500 hours of community service.

The bill may have a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2023.

II. Present Situation:

A nonprofit organization, as defined in 26 U.S.C. s. 501(c)(3), is an organization that is organized and operated exclusively for religious, charitable, scientific, public safety, literary, or educational purposes, or to foster specified national or international amateur sports competition, or for the prevention of cruelty to children or animals. None of such an organizations earnings may benefit any private shareholder or individual. No substantial part of the organizations activities may be directed towards attempting to influence legislation or any political campaign.

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.¹

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.² First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$750.³ 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,⁴ and a third degree felony if there are two or more prior convictions.⁵

Third degree grand theft, a third degree felony,⁶ is theft of:

- Property valued at \$750 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,⁷ a bee colony of a registered beekeeper, or aquaculture species raised at a certified aquaculture facility;⁸
 - Any fire extinguisher;⁹
 - Citrus fruit of 2,000 or more individual pieces;
 - Any stop sign;

¹ Section 812.014(1), F.S.

² 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.

³ 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.

⁴ Section 812.014(3)(b), F.S.

⁵ Section 812.014(3)(c), F.S.

⁶ 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.

⁷ This includes any animal of the equine, avian, bovine, or swine class or other grazing animal.

⁸ If the theft is of these types of property, a fine of \$10,000 must be imposed. Section 812.014 (2)(c)7., F.S.

⁹ Section 812.014(2)(c)8., F.S., provides that such fire extinguisher must, at the time of the taking, be installed in any building for the purpose of fire prevention and control.

- Property taken from a designated, posted construction site;¹⁰ and
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$750.¹¹

Reclassification of Theft Offenses

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.¹² 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.¹³

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

Reclassification under s. 812.0145, F.S., is similar to the reclassification provided in the bill for theft from a qualified charitable organization. Section 812.0145(2), F.S., reclassifies the degree of theft when the victim of the theft is a person 65 years of age or older.¹⁴ Reclassification is based on the value of the funds, assets, or property involved in the theft:

- First degree felony (value is \$50,000 or more);
- Second degree felony (value is 10,000 or more, but less than \$50,000); or
- Third degree felony (value is \$300 or more, but less than \$10,000).

Criminal Punishment Code

The Criminal Punishment Code¹⁵ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹⁶ Offenses are either ranked in the Offense Severity Ranking Chart (OSRC), or are ranked by default based on a ranking assigned to the felony degree of the offense. The Default ranking is as follows:

- A first degree felony is ranked as a level 7 offense.
- A second degree felony is ranked as a level 4 offense.
- A third degree felony is ranked as a level 1 offense.¹⁷

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

¹⁰ Section 812.014(2)(c), F.S.

¹¹ Section 812.014(2)(d), F.S.

¹² Section 812.014(3)(c), F.S.

¹³ Section 812.015(9)(a), F.S.

¹⁴ The perpetrator must know or have reason to believe that the victim was 65 years of age or older. Section 812.0145(2), F.S.

¹⁵ 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.

¹⁶ Section 921.0022, F.S.

¹⁷ Section 921.0023, F.S.

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.¹⁸ Absent mitigation,¹⁹ 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.²⁰

III. Effect of Proposed Changes:

The bill creates s. 812.0146, F.S., to reclassify the crime of theft, whenever a person is charged with committing theft from an organization that person knows or has reason to believe is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code. The crime of theft is reclassified based on the value of the property taken. If the funds, assets, or property involved in the theft from a qualified organization is valued at:

- Fifty thousand dollars or more, the offender commits a first degree felony.
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- Three hundred dollars or more, but less than \$10,000, the offender commits a third degree felony.

A person who is convicted of theft of more than \$1,000 from an organization that the person knows or has reason to believe is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code must be ordered to make restitution to the victim and to perform up to 500 hours of community service. Such restitution and community service hours are in addition to any fine or sentence which may be imposed by the court.

The bill does not rank the reclassified offenses on the OSRC, and therefore will default to the statutorily assigned ranking levels, pursuant to s. 921.0023, F.S., as follows:

- A first degree felony is ranked as a level 7 offense.
- A second degree felony is ranked as a level 4 offense.
- A third degree felony is ranked as a level 1 offense.

The bill is effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁹ 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.

²⁰ 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.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections. The CJIC provides the following additional information regarding its estimate:

While these felonies are newly created, other felonies currently exist where theft from nonprofit organizations might be prosecuted, such as retail theft, grand theft, and petit theft. Per DOC, there were 40 new commitments to prison in FY 18-19 for retail theft offenses, and 23 new commitments in FY 19-20. There were 22 new commitments in FY 20-21, and 14 new commitments in FY 21-22. For grand theft, there were 1,511 new commitments in FY 18-19, and 1,069 new commitments in FY 19-20. In FY 20-21, there were 698 new commitments, and in FY 21-22, there were 785 new commitments. While a large proportion of the grand theft commitments include a third conviction for petit theft, there are also a large number of 1st degree misdemeanor petit theft convictions each year for those on their first or second conviction. Per FDLE, in FY 21-22, there were 5,335 guilty/convicted charges and 1,454 adjudication withheld charges. These misdemeanors could be elevated to felonies under this new language, though it is not known how many of these involved theft from a nonprofit organization, nor is it known how many of these fall between \$300 and \$750, since the minimum threshold for a 1st degree misdemeanor is \$100.

The same can be said for the other theft felonies where theft from nonprofit organizations might currently fall, and which also have differing monetary thresholds from the current language. Therefore, the impact of this new language on the prison population cannot be quantified.²¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 812.0146 of the Florida Statutes.

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 March 27, 2023:

The committee substitute specifies that the offender must know or have reason to believe that the organization is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code to receive the enhanced penalties.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²¹ *SB 836- Theft from Nonprofit Organizations*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).