

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 889 Theft from Nonprofit Organizations

**SPONSOR(S):** Criminal Justice Subcommittee, Williams

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 836

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	13 Y, 0 N	Smith	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

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 such use.

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. If the property is valued at:

- \$100,000 or more, the offender commits a first-degree felony.
- \$20,000 or more, but less than \$100,000, the offender commits a second-degree felony.
- \$750 or more, but less than 20,000, the offender commits a third-degree felony.

A nonprofit organization, as defined in 26 U.S.C. § 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, and none of its earnings benefit any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.

CS/HB 889 creates s. 812.0146, F.S. to provide for the reclassification of theft offenses of specified amounts of funds, assets, or property from an organization that the offender knows or has reason to believe is a nonprofit organization. If the funds, assets, or property are valued at:

- \$50,000 or more, the offender commits a first-degree felony.
- \$10,000 or more, but less than \$50,000, the offender commits a second-degree felony.
- \$300 or more, but less than \$10,000, the offender commits a third-degree felony.

Additionally, under the bill, a court must order a person who is convicted of theft of more than \$1,000 from a nonprofit organization 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 imposed, and may not be in lieu thereof.

The bill may have a positive indeterminate impact on jail and prison beds by creating new felony offenses for theft against a nonprofit organization, potentially increasing admissions and sentence lengths.

The bill provides an effective date of October 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Property 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<sup>1</sup>; 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.<sup>2</sup>

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. 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. The offense levels for theft crimes based on property value thresholds are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First-degree felony <sup>3</sup>
	≥ \$20,000, but < \$100,000	Second-degree felony <sup>4</sup>
	≥ \$10,000, but < \$20,000	Third-degree felony <sup>5</sup>
	≥ \$5,000, but < \$10,000	Third-degree felony
	≥ \$750, but < \$5,000	Third-degree felony
	≥ \$100, but < \$300 if taken from a dwelling or unenclosed curtilage <sup>6</sup> of a dwelling	Third-degree felony
Petit Theft	≥ \$100, but < \$750	First-degree misdemeanor <sup>7</sup>
	< \$100	Second-degree misdemeanor <sup>8</sup>

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first-degree misdemeanor.<sup>9</sup> Petit theft committed by a person with two or more previous theft convictions is a third-degree felony.<sup>10</sup>

##### Theft From Persons 65 Years of Age or Older

<sup>1</sup> S. 812.014(1)(a), F.S.

<sup>2</sup> S. 812.014(1)(b), F.S.

<sup>3</sup> A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082(3)(b)1 . and 775.083(1)(b), F.S.

<sup>4</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082(3)(d) and 775.083(1)(b), F.S.

<sup>5</sup> A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>6</sup> "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.

<sup>7</sup> A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

<sup>8</sup> A second-degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

<sup>9</sup> S. 812.014(3)(b), F.S.

<sup>10</sup> S. 812.014(3)(c), F.S.

Section 812.0145, F.S., reclassifies theft offenses of specified amounts of funds, assets, or property when the offender knows or has reason to believe that the victim was 65 years of age or older, as follows:

Property Value	Offense Level
≥ \$50,000	First-degree felony
≥ \$10,000, but < \$50,000	Second-degree felony
≥ \$300, but < \$10,000	Third-degree felony

The reclassified offenses are ranked as follows on the Criminal Punishment Code offense severity ranking chart:

- The first-degree felony as a level 7 offense.<sup>11</sup>
- The second-degree felony as a level 5 offense.<sup>12</sup>
- The third-degree felony as a level 3 offense.<sup>13</sup>

Additionally, a court must order a person who is convicted of theft of more than \$1,000 from a person 65 years of age or older 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 imposed, and may not be lieu thereof.<sup>14</sup>

### Nonprofit Organizations

A nonprofit organization, as defined in 26 U.S.C. § 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, and none of its earnings benefit any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.<sup>15</sup>

### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>16</sup> are listed in a single offense severity ranking chart (OSRC),<sup>17</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>18, 19</sup> A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.<sup>20, 21</sup> The final score

<sup>11</sup> S. 921.0022(3)(g), F.S.

<sup>12</sup> S. 921.0022(3)(e), F.S.

<sup>13</sup> S. 921.0022(3)(c), F.S.

<sup>14</sup> S. 812.0145(1), F.S.

<sup>15</sup> 26 U.S.C. § 501(c)(3); IRS, *Exemption Requirements – 501(c)(3) Organizations*, <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations> (last visited Mar. 23, 2023).

<sup>16</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

<sup>17</sup> S. 921.0022, F.S.

<sup>18</sup> S. 921.0022(2), F.S.

<sup>19</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

<sup>20</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>21</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>22</sup>

### Effect of Proposed Changes

CS/HB 889 creates s. 812.0146, F.S. to provide for the reclassification of theft offenses of specified amounts of funds, assets, or property from an organization that the offender knows or has reason to believe is a nonprofit organization, as follows:

Property Value	Offense Level
≥ \$50,000	First-degree felony
≥ \$10,000, but < \$50,000	Second-degree felony
≥ \$300, but < \$10,000	Third-degree felony

The bill, however, does not rank the reclassified offenses on the Criminal Punishment Code OSRC, and therefore, the offenses will default to statutorily assigned levels as described in s. 921.0023, F.S. Accordingly, the reclassified offenses will be ranked as follows:

- The first-degree felony as a level 7 offense.
- The second-degree felony as a level 4 offense.
- The third-degree felony as a level 1 offense.

Under the bill, a court must order a person who is convicted of theft of more than \$1,000 from a nonprofit organization 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, and may not be lieu thereof.

The bill provides an effective date of October 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 812.0146, F.S., relating to theft from a nonprofit organization; reclassification of offenses.

**Section 2:** Provides an effective date of October 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

<sup>22</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a non prison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by creating new felony offenses for theft against a nonprofit organization, potentially increasing admissions and sentence lengths.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment adds the requirement that the offender knew or had reason to believe that the organization is a nonprofit organization to the elements of the offense.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.