

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: SB 406

INTRODUCER: Senator Brandes and others

SUBJECT: Theft

DATE: March 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 406 amends various provisions related to criminal theft offenses. First, the bill amends sections 812.014 and 812.015, Florida Statutes, increasing the threshold amount for third degree felony theft offenses from \$300 to \$1,500. This provision applies to grand theft and retail theft. The bill also removes a fire extinguisher from the list of property that automatically constitute a third degree grand theft regardless of the value of the property taken.

The bill modifies when specified theft offenses will be reclassified to the next degree higher based on the presence of prior theft convictions in the offender's criminal history. The bill provides that for an offense to be reclassified from:

- First degree misdemeanor petit theft to a third degree felony, the offender must have previously been convicted two or more times as an *adult* for any theft.
- Third degree felony retail theft to a second degree felony, the offender must have previously been convicted of a violation of section 812.015(8), Florida Statutes (retail theft), as an *adult*.

Additionally, for an offense to qualify for reclassification, the most recent theft offense must have occurred within three years from the expiration of the adult offender's sentence for the most recent theft conviction.

The bill also amends sections 812.014 and 812.015, Florida Statutes, providing that the determination of the value of property taken in violation of these sections must be based on the fair market value of the property at the time the taking occurred.

Lastly, the bill amends sections 812.014 and 812.015, Florida Statutes, requiring that the threshold amounts for theft offenses must be adjusted every five years.

The bill amends section 921.0022, Florida Statutes, making conforming changes to the Criminal Punishment Code severity ranking chart to changes made by the bill. A number of sections of law are reenacted by the bill to incorporate the changes made by the bill.

The Criminal Justice Impact Conference (CJIC) has not reviewed the bill at this time. However, on February 27, 2019, the CJIC reviewed HB 589, which is similar to the current bill, and estimated that the bill would have a “negative indeterminate” prison bed impact.<sup>1</sup>

The bill is effective October 1, 2019.

## II. Present Situation:

Approximately 3,000 people currently are incarcerated in the Department of Corrections (DOC) for felony theft convictions and just over 24,000 people are on state community supervision for a felony theft crime in Florida.<sup>2</sup> Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.<sup>3</sup> Such increases ensure that associated “criminal sentences don’t become more severe over time simply because of natural increases in the prices of consumer goods.”<sup>4</sup>

The majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500. Between 2003 and 2015, nine states, including Alabama, Mississippi, and Louisiana, raised their felony thresholds twice.<sup>5</sup>

### 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.<sup>6</sup>

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<sup>1</sup> Criminal Justice Impact Conference (updated through February 27, 2019), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls>.

<sup>2</sup> Email from Scotti Vaughan, Department of Corrections, Deputy Legislative Affairs Director, February 6, 2019 (on file with Senate Criminal Justice Committee).

<sup>3</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties*, (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited February 4, 2019); See also Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures, (June 2015), available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited February 4, 2019).

<sup>4</sup> John Gramlich and Katie Zafft, *Updating State Theft Laws Can Bring Less Incarceration – and Less*, Stateline, Pew Charitable Trusts, (March 1, 2016), available at <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/31/updating-state-theft-laws-can-bring-less-incarceration-and-less-crime> (last visited February 4, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Section 812.014(1), F.S.

Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>7</sup> First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>8</sup> 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,<sup>9</sup> and a third degree felony if there are two or more prior convictions.<sup>10</sup>

Third degree grand theft, a third degree felony,<sup>11</sup> is theft of:

- Property valued at \$300 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,<sup>12</sup> a bee colony of a registered beekeeper, or aquaculture species raised at a certified aquaculture facility;
  - Any fire extinguisher;
  - Citrus fruit of 2,000 or more individual pieces;
  - Any stop sign;
  - Property taken from a designated, posted construction site;<sup>13</sup> and
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>14</sup>

The last time the Legislature increased the minimum threshold property value for third degree grand theft was in 1986.<sup>15</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996. The petit theft provisions were also amended, including the thresholds, in 1996.<sup>16</sup>

### **Retail Theft**

Section 812.015(1)(d), F.S., defines retail theft as:

- The 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.

<sup>7</sup> 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.

<sup>8</sup> 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.

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

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

<sup>11</sup> 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.

<sup>12</sup> This includes any animal of the equine, avian, bovine, or swine class or other grazing animal.

<sup>13</sup> Section 812.014(2)(c), F.S.

<sup>14</sup> Section 812.014(2)(d), F.S.

<sup>15</sup> Chapter 86-161, s. 1, L.O.F.

<sup>16</sup> Chapter 96-388, s. 49, L.O.F.

Retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense;
- Commits theft from more than one location within a 48-hour period;<sup>17</sup>
- 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.<sup>18</sup>

Retail theft is a second degree felony if the person has previously been convicted of third degree felony retail theft or 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 where the stolen property has a value in excess of \$3,000.<sup>19</sup> The statute also requires a fine of not less than \$50 and no more than \$1,000 for a second or subsequent conviction for petit theft from a merchant, farmer, or transit agency.<sup>20</sup>

The threshold for a third degree felony retail theft was created and set by the Legislature in 2001.<sup>21</sup>

### **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.<sup>22</sup> 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.<sup>23</sup>

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

Juvenile offenders who are adjudicated delinquent for theft offenses are considered to have been "convicted" of theft and are treated the same as adult offenders for purposes of these penalty enhancements.<sup>24</sup>

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<sup>17</sup> In the first two instances, the amount of each individual theft is aggregated to determine the value of the property stolen. Section 812.015(8)(a) and (b), F.S.

<sup>18</sup> Section 812.015(8), F.S.

<sup>19</sup> Section 812.015(9), F.S.

<sup>20</sup> Section 812.015(2), F.S.

<sup>21</sup> Chapter 01-115, s. 3, L.O.F.

<sup>22</sup> Section 812.014(3)(c), F.S.

<sup>23</sup> Section 812.015(9)(a), F.S.

<sup>24</sup> *T.S.W. v. State*, 489 So. 2d 1146 (Fla. 2d DCA 1986); *R.D.D. v. State*, 493 So. 2d 534 (Fla. 5th DCA 1986).

### III. Effect of Proposed Changes:

#### Property Theft

The bill amends s. 812.014(2)(c), F.S., increasing the minimum threshold amounts for a third degree felony grand theft from \$300 to \$1,500. For property taken from a dwelling or enclosed curtilage, the theft threshold amounts are modified from \$100 or more, but less than \$300, to \$1,500 or more, but less than \$5,000. The first degree misdemeanor petit theft threshold amount is modified from \$100 or more, but less than \$300, to \$500 or more, but less than \$1,500.

The bill also deletes a fire extinguisher from the list of property that constitute a third degree grand theft regardless of the value of the property taken.<sup>25</sup>

Lastly, the bill modifies the enhancement statute providing that a first degree petit theft becomes a third degree felony only if:

- The offender has previously been convicted two or more times *as an adult* for any theft; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

#### Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from \$300 or more, to \$1,500 or more. The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft *as an adult*; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

#### Value and Periodic Threshold Adjustment

The bill amends ss. 812.014 and 812.015, F.S., providing that the determination of the value of property taken in violation of these sections must be based on the fair market value of the property at the time the taking occurred.

The bill also amends ss. 812.014 and 812.015, F.S., requiring that the threshold amounts for these theft offenses must be adjusted every five years in an amount equal to the total of the annual increases for that five-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Office of Economic and Demographic Research (EDR) is required to calculate the thresholds, rounded to the nearest \$50, and publish the amounts, as adjusted, on its website by July 1 of every fifth year. These new threshold amounts will take effect on October 1 of that year. The bill also requires EDR to certify the revised amounts to the Division of Law Revision (Division). The bill requires the Division to conform ss. 812.014 and 812.015, F.S., to the revised amounts.

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<sup>25</sup> These offenses will now be classified by the property value rather than automatically qualifying as a third degree grand theft.

The bill amends s. 921.0022, F.S., to conform the Criminal Punishment Code offense severity ranking chart to changes made by the bill. The bill reenacts ss. 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 932.701, 943.051, 985.11, and 985.557, F.S., incorporating changes made by the act.

The bill is effective October 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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 (CJIC) has not reviewed the bill at this time. However, on February 27, 2019, the CJIC reviewed HB 589, which is similar to the current bill, and estimated that the bill would have a “negative indeterminate” prison bed impact.<sup>26</sup>

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<sup>26</sup> Criminal Justice Impact Conference (updated through February 27, 2019), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls>.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of Florida Statutes: 812.014, 812.015, and 921.0022.

This bill reenacts the following sections of the Florida Statutes: 95.18, 373.6055, 400.9935, 409.910, 489.126, 538.09, 538.23, 550.6305, 627.743, 634.319, 634.421, 636.238, 642.038, 705.102, 718.111, 812.015, 812.0155, 812.14, 893.138, 932.701, 943.051, 985.11, and 985.557.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.