

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 589 Theft Offenses  
**SPONSOR(S):** Criminal Justice Subcommittee, Donalds and others  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	Mawn	Hall
2) Justice Appropriations Subcommittee	9 Y, 0 N	Smith	Gusky
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.

A person commits retail theft when he or she does any of the following with the intent to deprive a merchant of the possession, use, benefit, or full retail value of property:

- Takes possession of or carries away merchandise, property, money or negotiable documents;
- Alters or removes a label, universal product code, or price tag;
- Transfers merchandise from one container to another; or
- Removes a shopping cart with intent to deprive the merchant of possession, use, benefit, or full retail value.

Theft of certain types of property, including a will, codicil, or other testamentary instrument, a fire extinguisher, an item taken from a designated construction site identified by a posted sign, or a stop sign, is a third degree felony. The degree of theft of a utility service depends on the value of the utility taken.

CS/HB 589 increases the minimum threshold values for the following theft and retail offenses:

- Second degree misdemeanor petit theft- less than \$100 increased to less than \$500;
- First degree misdemeanor petit theft- \$100 or more, but less than \$300 increased to \$500 or more, but less than \$1,000;
- Third degree felony grand theft- \$300 or more increased to \$1,000 or more;
- Third degree felony grand theft from a dwelling or its enclosed curtilage- \$100 or more, but less than \$300 increased to \$1,000 or more, but less than \$5,000; and
- Third degree felony retail theft- \$300 or more increased to \$1,000 or more.

The bill reduces the penalty for theft of a will, codicil, or other testamentary instrument, a fire extinguisher, items taken from a construction site, and a stop sign from a third degree felony to a second degree misdemeanor. The bill also makes utility theft a third degree felony. Finally, the bill provides that enhanced penalties for theft and retail theft offenses only apply if the offender has a prior adult theft or retail theft conviction and the new offense occurs within three years of the expiration of the sentence for the prior conviction.

The Criminal Justice Impact Conference considered the bill on February 27, 2019, and determined the bill would significantly reduce the need for prison beds (decrease of more than 25 prison beds).

The bill provides an effective date of July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0589c.JUA

**DATE:** 3/27/2019

## 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
	≥ \$300, 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 < \$300	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>

Florida last increased the minimum threshold amount for third degree felony grand theft in 1986.<sup>11</sup> Florida added the third degree felony grand theft provisions related to property taken from a dwelling or

<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.

<sup>11</sup> Ch. 86-161, Laws of Fla.

its unenclosed curtilage in 1996.<sup>12</sup> The petit theft provisions, including the threshold amounts, were last amended in 1996.<sup>13</sup>

### Retail Theft

A person commits retail theft when he or she does any of the following with the intent to deprive a merchant of the possession, use, benefit, or full retail value of property:

- Takes possession of, or carries away, merchandise, property, money or negotiable documents;
- Alters or removes a label, universal product code, or price tag;
- Transfers merchandise from one container to another; or
- Removes a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.<sup>14</sup>

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

- Individually, or with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Commits theft from more than one location within a 48-hour period, in which case 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.

Retail theft is a second degree felony when:

- A 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 retail theft where the value of the stolen property exceeds \$3,000.<sup>15</sup>

Florida established the current threshold amounts for third degree felony retail theft in 2001.<sup>16</sup>

### Prison and Probation Admissions

In fiscal year 2017-2018, the Florida Department of Corrections (DOC) admitted 1,591 inmates to prison for grand theft offenses charged under s. 812.014, F.S., and 33 inmates for retail theft offenses charged under s. 812.015, F.S.<sup>17</sup> During the same period, DOC admitted 9,511 offenders to probation for grand theft offenses charged under s. 812.014, F.S., and 195 offenders for retail theft offenses charged under s. 812.015, F.S.<sup>18</sup>

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<sup>12</sup> Ch. 96-388, Laws of Fla.

<sup>13</sup> *Id.*

<sup>14</sup> S. 812.015(1)(d), F.S.

<sup>15</sup> S. 812.015(9), F.S.

<sup>16</sup> Ch. 2001-115, Laws of Fla.

<sup>17</sup> Email from Jared Torres, Legislative Affairs Director, Florida Department of Corrections, Fwd: Information Request (Feb. 26, 2019).

<sup>18</sup> *Id.*

## Theft Threshold Amounts in Other States

Since 2000, at least 39 states have increased the threshold dollar amounts for felony theft crimes.<sup>19</sup> Nine states increased the threshold dollar amounts twice during this time period.<sup>20</sup>

Year of Change	State	Previous threshold	Enacted threshold
<b>2001</b>	Oklahoma	\$50	\$500
<b>2002</b>	Missouri	\$150	\$500
<b>2003</b>	Alabama	\$250	\$500
	Mississippi	\$250	\$500
<b>2004</b>	Kansas	\$500	\$1,000
	Wyoming	\$500	\$1,000
<b>2005</b>	South Dakota	\$500	\$1,000
<b>2006</b>	Arizona	\$250	\$1,000
	New Mexico	\$250	\$500
	Vermont	\$500	\$900
<b>2007</b>	Colorado	\$500	\$1,000
	Minnesota	\$500	\$1,000
<b>2009</b>	Connecticut	\$1,000	\$2,000
	Delaware	\$1,000	\$1,500
	Kentucky	\$300	\$500
	Louisiana	\$300	\$500
	Maryland	\$500	\$1,000
	Montana	\$1,000	\$1,500
	Oregon	\$750	\$1,000
	Washington	\$250	\$750
<b>2010</b>	California	\$400	\$950
	Illinois	\$300	\$500
	New Hampshire	\$500	\$1,000
	South Carolina	\$1,000	\$2,000
	Utah	\$1,000	\$1,500
<b>2011</b>	Arkansas	\$500	\$1,000
	Nevada	\$250	\$650
	Ohio	\$500	\$1,000
<b>2012</b>	Georgia	\$500	\$1,500
	Rhode Island	\$500	\$1,500
<b>2013</b>	Colorado	\$1,000	\$2,000
	Indiana	Any amount	\$750
	North Dakota	\$500	\$1,000
<b>2014</b>	Alaska	\$500	\$750
	Louisiana	\$500	\$750
	Mississippi	\$500	\$1,000
<b>2015</b>	Alabama	\$500	\$1,500
	Nebraska	\$500	\$1,500
	Texas	\$1,500	\$2,500
<b>2016</b>	Alaska	\$750	\$1,000
	Hawaii	\$300	\$750

<sup>19</sup> Pew Charitable Trusts, *States Can Safely Raise Their Felony Theft Thresholds, Research Shows* (May 22, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/05/22/states-can-safely-raise-their-felony-theft-thresholds-research-shows> (last visited Mar. 5, 2019).

<sup>20</sup> *Id.*

	Kansas	\$1,000	\$1,500
	Maryland	\$1,000	\$1,500
	Oklahoma	\$500	\$1,000
	Tennessee	\$500	\$1,000
<b>2017</b>	Massachusetts	\$250	\$1,200
<b>2018</b>	Virginia	\$200	\$500

The majority of states (36) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft.<sup>21</sup> Twelve states have thresholds between \$500 and \$950, and two states, including Florida, have thresholds below \$500.<sup>22</sup>

Value Threshold	States	Total Number
\$200	NJ	1
\$300	FL	1
\$500	IL, KY, NM, VA	4
\$650	NV	1
\$750	IN, HI, LA, MO, WA	5
\$900	VT	1
\$950	CA	1
\$1,000	AK, AZ, AR, DC, ID, IA, ME, MI, MN, MS, NH, NY, NC, ND, OH, OK, OR, SD, TN, WV, WY	21
\$1,200	MA	1
\$1,500	AL, DE, GA, KS, MD, MT, NE, RI, UT	9
\$2,000	CO, CT, PA, SC	4
\$2,500	TX, WI	2

Opponents of raising the felony theft threshold argue that increasing the threshold will incentivize offenders to steal items of greater value.<sup>23</sup> An examination of 23 states that changed felony theft thresholds between 2001 and 2011 revealed:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates;
- States that increased thresholds reported roughly the same average decrease in crime as the 27 states that did not; and
- The amount of a state's felony theft threshold did not correlate with the state's property crime and larceny rates.<sup>24</sup>

### Theft of Specified Property

A person commits third degree grand theft and a third degree felony if he or she steals:

- A will, codicil, or other testamentary instrument;<sup>25</sup>
- A firearm;<sup>26</sup>
- A motor vehicle, except as provided in paragraph (a);<sup>27</sup>
- Any commercially farmed animal;<sup>28</sup>
- A bee colony of a registered beekeeper;<sup>29</sup>

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Lauren Krisai, *Stuck in the 80s: Time for Reform of Florida's Felony Theft Threshold*, The Journal of the James Madison Institute (Spring 2017), [https://reason.org/wp-content/uploads/files/florida\\_theft\\_threshold\\_stuck\\_in\\_1980s.pdf](https://reason.org/wp-content/uploads/files/florida_theft_threshold_stuck_in_1980s.pdf) (last visited Mar. 5, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> S. 812.014(2)(c)4., F.S.

<sup>26</sup> S. 812.014(2)(c)5., F.S.

<sup>27</sup> S. 812.014(2)(c)6., F.S.

<sup>28</sup> S. 812.014(2)(c)7., F.S.

- Aquaculture species raised at a certified aquaculture facility;<sup>30</sup>
- Any fire extinguisher;<sup>31</sup>
- Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;<sup>32</sup>
- Property taken from a designated construction site identified by a posted sign;<sup>33</sup>
- Any stop sign;<sup>34</sup>
- Anhydrous ammonia;<sup>35</sup> or
- Any amount of a controlled substance as defined in s. 893.02, F.S.<sup>36</sup>

A person commits a second degree felony if:

- The person steals the aforementioned property from within a county subject to a state of emergency declared by the Governor under ch. 252, F.S.;
- The theft occurs after the declaration of emergency; and
- Conditions arising from the emergency facilitate the theft.<sup>37</sup>

A person commits a second degree misdemeanor if the person steals any property not specified in s. 812.014(2), F.S.<sup>38</sup>

### Utility Theft

“Utility” means any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which sells, generates, provides, or delivers gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunications service.<sup>39</sup>

A person commits utility theft if he or she:

- Willfully alters, tampers with, damages, or knowingly allows damage to a meter or other device belonging to a utility in a way that causes loss or damage or prevents a usage meter from registering usage;<sup>40</sup>
- Alters the index or breaks the seal of any utility meter;<sup>41</sup>
- Hinders the proper action or accurate registration of any utility meter or device;<sup>42</sup>
- Knowingly uses, wastes, or allows the waste of utilities after tampering with, injuring, or altering the meter or utility device belonging to such utility;<sup>43</sup>
- Connects or causes a connection with a wire, main, service pipe or other pipes, appliance, or appurtenance in a manner that uses any service or any utility without consent;<sup>44</sup>
- Causes a utility, without consent, to supply any service without reporting the service for payment;<sup>45</sup>
- Causes electricity, gas, or water to bypass a meter provided by a utility without the utility’s consent;<sup>46</sup> or

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> S. 812.014(2)(c)8., F.S.

<sup>32</sup> S. 812.014(2)(c)9., F.S.

<sup>33</sup> S. 812.014(2)(c)10., F.S.

<sup>34</sup> S. 812.014(2)(c)11., F.S.

<sup>35</sup> S. 812.014(2)(c)12., F.S.

<sup>36</sup> S. 812.014(2)(c)13., F.S.

<sup>37</sup> S. 812.014(2)(c), F.S.

<sup>38</sup> S. 812.014(3)(a), F.S.

<sup>39</sup> S. 812.14(1), F.S.

<sup>40</sup> S. 812.14(2)(a), F.S.

<sup>41</sup> S. 812.14(2)(b), F.S.

<sup>42</sup> S. 812.14(2)(c), F.S.

<sup>43</sup> S. 812.14(2)(d), F.S.

<sup>44</sup> S. 812.14(2)(e), F.S.

<sup>45</sup> S. 812.14(2)(f), F.S.

<sup>46</sup> S. 812.14(2)(g), F.S.

- Uses or receives the direct benefit from the use of a utility knowing that the direct benefit resulted from any tampering with, altering of, or injury to any meter or other utility device to avoid payment.<sup>47</sup>

Utility theft is punishable as provided in s. 812.014, F.S. Therefore, the degree of the utility theft offense depends on the value of the utility taken.

## Effect of the Proposed Changes

### Property Theft

CS/HB 589 increases the threshold amounts for the following theft offenses:

Offense	Current Threshold	Proposed Threshold
Second degree petit theft	< \$100	< \$500
First degree petit theft	≥ \$100, but < \$300	≥ \$500, but < \$1,000 <sup>48</sup>
Third degree grand theft	≥ \$300, but < \$20,000	≥ \$1,000, but < \$20,000 <sup>49</sup>
Third degree grand theft of property from a dwelling or its enclosed curtilage	≥ \$100, but < \$300	≥ \$1,000, but < \$5,000 <sup>50</sup>

The bill retains the provision making a conviction for petit theft after a previous conviction for any theft a first degree misdemeanor. However, the bill provides that a person commits a third degree felony only if:

- The person commits petit theft in the first degree after two or more previous theft convictions as an adult; and
- The third or subsequent petit theft offense occurred within three years of the expiration of the person's sentence for the most recent theft conviction.

This change prohibits a court from using juvenile theft offenses to enhance a petit theft offense to a felony and limits the time frame from which a court may use prior theft convictions for sentence enhancement.

### Retail Theft

The bill increases the threshold amount for third degree felony retail theft from \$300 or more to \$1,000 or more. The bill also amends s. 812.015, F.S., to enhance retail theft to a second degree felony only if:

- The offender has a previous retail theft conviction as an adult; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's most recent retail theft conviction.

This change prohibits a court from using juvenile retail theft offenses to enhance a retail theft offense to a felony and limits the time frame from which a court may use prior retail theft convictions for sentence enhancement.

### Theft of Specified Property

<sup>47</sup> S. 812.14(2)(h), F.S.

<sup>48</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$100 in 1996 has the same buying power as \$163.03 in 2019 dollars and \$300 in 1996 has the same buying power as \$489.08 in 2019 dollars. United States Department of Labor, Bureau of Labor Statistics, *CPI Inflation Calculator*, <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Mar. 5, 2019).

<sup>49</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 1986 has the same buying power as \$688.99 in 2019 dollars. *Id.*

<sup>50</sup> *Id.*

The bill deletes the following items from the list of property constituting a third degree felony if stolen:

- Wills, codicils, or other testamentary instruments;
- Fire extinguishers;
- Property taken from a designated construction site identified by a posted sign; and
- Stop signs.

As a result, the offense level for the crime will be based on the property value of the item stolen rather than automatically qualifying as a third degree felony.

#### Utility Theft

The bill classifies utility theft under s. 812.14, F.S., as a third degree felony.

#### Other

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 provides an effective date of July 1, 2019.

#### B. SECTION DIRECTORY:

**Section 1:** Amending s. 812.014, F.S., relating to theft.

**Section 2:** Amending s. 812.015, F.S., relating to retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.

**Section 3:** Amending s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 4:** Providing an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered this bill on February 27, 2019, and determined the bill would reduce the need for prison beds by a significant amount.<sup>51</sup>

Per DOC, in FY 17-18 there were 10,351 offenders sentenced under s. 812.014(2)(c)(1), F.S., with 1,131 of these offenders sentenced to prison. The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds. Nobody was sentenced for theft of a will or theft of a stop sign. Taking property from a construction site had 15 offenders sentenced, with one offender receiving a prison sentence. Theft of a fire extinguisher had 4 offenders sentenced, with no offenders receiving a prison sentence. There were 116 offenders sentenced under s. 812.014(2)(d), F.S., with 10 of these offenders sentenced to prison. There were 3,389 offenders sentenced under s. 812.014(3)(c), F.S., with 436 of these offenders sentenced to prison. There were 301 offenders sentenced under s.

<sup>51</sup> A significant impact is a change of more than 25 prison beds.



812.015(8), F.S., with 65 of these offenders sentenced to prison. The available data cannot determine how many offenders would be impacted by the proposed changes.<sup>52</sup>

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

1. Revenues:

None.

2. Expenditures:

The bill may increase local government expenditures by an indeterminate amount as it raises the threshold for felony theft offenses, which may result in more county jail sentences.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 5, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment conformed the Criminal Punishment Code offense severity ranking chart to changes made by the bill.

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

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<sup>52</sup> Criminal Justice Impact Conference, *HB 589 – Theft Offenses*, February 27, 2019, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB589.pdf>, (last accessed March 19, 2019).