

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 772

SPONSOR: Criminal Justice Committee and Senator Rossin

SUBJECT: Robbery by sudden snatching

DATE: March 10, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates a new offense: “robbery by sudden snatching.” The bill provides that robbery by sudden snatching is the taking of money or other property from the victim’s person with intent to deprive the victim of the money or other property, “when, in the course of the taking, the victim was or becomes aware of the taking.” The bill specifies that it is not necessary to show that the offender used any amount of force beyond that necessary to obtain possession of the money or other property. The bill specifies that it is not necessary to show that the victim resisted.

The bill responds to a Florida Supreme Court opinion which held that under the robbery statute, snatching or grabbing of property without resistance by the victim does not constitute robbery, but rather theft.

The bill provides that sudden snatching robbery will be punished as a third-degree felony (5-year maximum prison sentence) or as a second-degree felony (15-year maximum prison sentence) if the offender carried a firearm or other deadly weapon in the course of committing the sudden snatching robbery. The bill ranks robbery by sudden snatching as a level 5 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code and a level 7 offense when the offender carried a firearm or other deadly weapon. The increase in punishment from current law (a theft charge) would depend on the value of the property stolen. Since the property value is not relevant under the robbery statute, the greatest increase will be in cases where the property value is under \$300, currently a petit theft misdemeanor offense.

The bill takes effect on October 1, 1999.

This bill creates section 812.131 and substantially amends the following section of the Florida Statutes: 921.0022.

II. Present Situation:

A. Robbery

Robbery is the taking of money or other property (value is not relevant) from the person with the intent to temporarily or permanently deprive the person of the property *when in the course of the taking there is the use of force, violence, assault, or putting in fear.* s. 8123.13(1), F.S. If an offender commits a robbery without a weapon or firearm (strong-arm robbery), it is a second-degree felony which carries a maximum 15-year prison sentence. If an offender commits a robbery with a non-deadly weapon, it is a first-degree felony which carries a maximum 30-year prison sentence. If an offender commits a robbery with a firearm or other deadly weapon, it is a first-degree felony punishable by up to life imprisonment.

Note: Under the robbery statute, the use of the firearm or deadly weapon is irrelevant; the test is whether the object was *carried* by the perpetrator. *Dale v. State*, 703 So. 2d 1045 (Fla. 1997) (Overton, J., dissenting). “The victim may never even be aware that a robber is armed, so long as the perpetrator has the weapon in his possession during the offense.” *State v. Baker*, 452 So 2d 927 (Fla. 1984).

The element that distinguishes robbery from theft is the taking from the person by means of force, violence, assault, or putting in fear. In *Robinson v. State*, 692 So. 2d 883 (Fla. 1997), the Florida Supreme Court considered the level of force or violence required to establish a robbery. (The Court did not consider robbery accomplished by means of the alternative element of intimidation by assault or putting in fear).

The Court held that “in order for the snatching of property from another to amount to robbery, the perpetrator must employ more than the force necessary to remove the property from the person. Rather, there must be resistance by the victim that is overcome by the physical force of the offender.” *Id.* at 886 (citations omitted).

The Court also stated: “Florida courts have consistently recognized that in snatching situations, the element of force as defined herein distinguishes the offense of theft and robbery.” *Id.* at 887 (citations omitted). For example, in *Goldsmith v. Smith*, 573 So. 2d 445 (Fla. 2d DCA 1991), the offender’s snatching of money from a person’s hand did not involve force sufficient to elevate the offense from petit theft to robbery.

By contrast, Georgia’s robbery statute expressly provides that robbery is the taking of property by “sudden snatching.” Ga. Code. Ann. s. 16-8-40 (1990). “Georgia case law interpreting this provision makes clear that to establish robbery by sudden snatching, no force must be exerted beyond the effort of the robber to transfer into his possession the property taken from the owner.” *Robinson*, at 887 (citations omitted).

B. Theft

Theft is the knowing use of another’s property with the intent to temporarily or permanently deprive the other of a right or benefit to the property or to appropriate the property to the offender’s own use. Theft is punished as grand theft or petit theft depending on the value of the

property stolen. Generally, if the stolen property is valued over \$300, the theft is grand theft, a felony punished from third to first-degree, depending on the actual amount or other aggravating factors. Again, as a general rule, if the stolen property is valued under \$300, the theft is petit theft, either a first or second-degree misdemeanor, depending on the actual amount or other aggravating factors. A first degree misdemeanor is punished by up to a 1 year jail sentence, and a second-degree misdemeanor is punished by up to a 60-day jail sentence.

C. Criminal Punishment Code and the Offense Severity Ranking Chart

All felony offenders whose offenses were committed on or after October 1, 1998 are subject to the Criminal Punishment Code. The Code allows the trial judge to sentence any felony offender to the statutory maximum for the offense degree, *e.g.*, to five years for a third-degree felony. The Code provides for a mandatory minimum sentence below which the judge may not sentence an offender without providing written reasons. s. 921.00265, F.S. The minimum sentence is calculated by computing various factors like victim injury and prior record. s. 921.0024, F.S. The Offense Severity Ranking Chart ranks most felony offenses from levels 1 to 10, and is another factor which goes into the minimum sentence calculation. A level 10 offense scores highest; level 1 and level "M" score lowest. s. 921.0022, F.S. Robbery with no firearm or other weapon is a second-degree felony and ranked as a level 6 offense. *Id.* Robbery with a non deadly weapon is a first-degree felony and ranked as a level 8 offense. *Id.* Robbery with a firearm is a first-degree felony punishable by life and ranked as a level 9 offense. *Id.*

III. Effect of Proposed Changes:

This bill creates a new offense: "robbery by sudden snatching." The bill provides that robbery by sudden snatching is the taking of money or other property from the victim's person with intent to deprive the victim of the money or other property, "when, in the course of the taking, the victim was or becomes aware of the taking."

As stated, the bill defines "sudden snatching" to require that the victim be aware of the taking. Consequently, the stealthy taking of property even from the victim's person (*e.g.*, picking a person's pocket), would remain a theft. However, the bill provides that it is not necessary to show the following in order to prove "sudden snatching":

- ▶ The offender used any force beyond that necessary to obtain the other's money or other property; or
- ▶ There was any resistance offered by the victim or injury to the victim's person.

The bill provides that the victim must be aware of the theft "*in the course of the taking.*" "In the course of the taking" is deemed a continuous series of acts or events which occur prior to, contemporaneous with, or subsequent to the taking of the property.

The bill responds to the Florida Supreme Court's opinion in *Robinson v. State*, 692 So.2d 883 (Fla. 1997). In *Robinson*, the court held that evidence of a snatching or grabbing of property without resistance by the victim does not establish the alternative elements of force or violence under the robbery statute. Instead, such evidence establishes theft.

The bill provides that the sudden snatching of any property from the person will be punished as a third-degree felony (5-year maximum prison sentence). If the offender carried a firearm or other deadly weapon in the course of committing a sudden snatching robbery, the offense is enhanced to a second-degree felony (15-year maximum prison sentence).

The bill ranks robbery by sudden snatching as a level 5 offense in the Offense Severity Ranking Chart of the Criminal Punishment Code and a level 7 offense when the offender carried a firearm or other deadly weapon. Currently, the other types of robbery offenses are ranked in levels 6 through 9.

The bill has the effect of increasing punishment from current law depending on the value of the property stolen, because theft penalties vary based on the value of property stolen (see above). Since the property value is not relevant under the robbery statute, the greatest increase will be in cases where the property value is under \$300, currently a petit theft misdemeanor offense.

The bill takes effect on October 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system. On February 15, 1999, the Criminal Justice Estimating Conference determined that Senate Bill 772 bill will have an insignificant impact on prison beds. Since the Committee Substitute for Senate Bill 772

provides a lesser penalty for sudden snatching with a firearm or other deadly weapon, the Estimating Conference's analysis should not be effected.

The Office of the State Courts Administrator determined that Senate Bill 772 "may create some increased judicial involvement and attendant costs, but any increase in expenditure should not be significant." Again, the Committee Substitute for Senate Bill 772 should not affect this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
