

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Criminal Justice Committee

BILL: SB 1644

INTRODUCER: Senator Gaetz

SUBJECT: Retail Theft

DATE: March 19, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Gordon</u> | <u>Cooper</u> | <u>CM</u> | Favorable |
| 2. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Favorable |
| 3. | _____ | _____ | <u>JA</u> | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill amends the retail theft statute to provide that it is a second degree felony to individually, or in concert with one or more persons, coordinate 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.

The bill amends the Criminal Punishment Code offense severity ranking chart to rank the second degree felony in Level 6.

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

II. Present Situation:

Organized Retail Theft

Each year, a University of Florida professor, Dr. Richard Hollinger, directs the National Retail Security Survey, which compiles recent empirical data on “loss prevention, asset protection and security activities.”¹ According to the 2006 National Retail Security Survey, a survey of senior loss prevention executives in the retail industry, 93 percent of respondents indicated that organized retail theft (ORT) is worsening.² In an article about monetary losses from shoplifting and organized crime, a media outlet cited results from the 2005 survey that indicated “the average dollar loss per incident of theft jumped to \$854 in 2005 from about \$621 in 2004, largely

¹ University of Florida, Security Research Project, <http://web.crim.ufl.edu/research/srp/srp.html>, (last visited 16 March 2007).

² University of Florida, National Retail Survey, *2006 Organized Retail Crime Survey Results*, available at http://www.nrf.com/modules.php?name=Pages&sp_id=429 (last visited 16 March 2007).

because of a rise in organized retail crime.”³ It has been reported that national losses due to ORT exceeded \$37 billion dollars in 2005.⁴ The impact of ORT is also felt by consumers. “The National Retail Federation, the industry’s largest trade group, estimates that shoppers pay almost 2 cents on every dollar they spend to cover the cost of retail theft.”⁵ Monetary losses are not the only concern. “In many cases stolen infant formula, pharmaceuticals, and other consumables are not stored under proper conditions. When these items are reintroduced into the retail market, they can pose a significant health hazard to the consumer.”⁶

The Florida Department of Law Enforcement (FDLE) statistically tracks various forms of larceny⁷ including, pocket picking, purse snatching, shoplifting, from a motor vehicle, motor vehicle parts, bicycles, from a building, devices, and “all other larceny.” According to the Florida Department of Law Enforcement, there were 30,371 shoplifting offenses of its total 229,643 larceny offenses in the first half of 2006.⁸ Those shoplifting incidents accounted for \$55,951,575 worth of stolen property, the costliest form of larceny outside of the “all other larceny” category.

“Retailers are particularly concerned about gangs, which have established supply chains that make organized theft, known as ‘boosting,’ too profitable to give up without a fight.”⁹ In this respect, ORT is similar to the involvement of organized criminal operations in computer crimes (phishing, denial of service attacks, etc.) that were previously committed mainly by individual operators. “Unlike average shoplifters, who steal for themselves, those who are involved in organized crime steal the goods and resell them to flea markets, pawn shops or on the Internet. They typically focus on specific brands and products that carry a high resale value, are in constant demand and have a high profit margin.”¹⁰

Retailers have responded to ORT in a number of different ways, including a national online database developed by the National Retail Federation and the Retail Industry Leaders Association (so information on ORT can be shared by retailers), electronic receipts, use of digital video recording technology, and use of company or company-hired investigators who help build cases for prosecution, especially evidence to support the interstate component necessary for federal arrests and prosecutions.¹¹

³ *Shoplifting Losses Jump 20 Percent*, Houston Chronicle, 2006 WLNR 20335235.

⁴ *Stores protect turf from gangs of thieves*, USA Today (November 17, 2006).

⁵ *When it comes to retail crime we all pay*, Associated Press (August 1, 2006).

⁶ Statement of Rep. Daniel E. Lungren before the House Subcommittee on Crime, Terrorism, and Homeland Security, 190th Congress (March 17, 2005).

⁷ The Federal Bureau of Investigation (FBI) defines larceny as “[t]he unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Examples are thefts of bicycles or automobile accessories, shoplifting, pocket-picking, or the stealing of any property or article that is not taken by force and violence or by fraud. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.” Department of Justice, FBI, Crime in the United States 2004, Appendix II-Offenses in Uniform Crime Reporting, http://www.fbi.gov/ucr/cius_04/appendices/appendix_02.html (last visited 16 March 2007).

⁸ FDLE, Crime in Florida, Florida Uniform Crime Report, Total Reported Larceny Offenses generated on 12 March 2007 at the request of Commerce Committee Staff.

⁹ See footnote 4.

¹⁰ See footnote 5.

¹¹ See footnotes 4 and 5.

The FBI is also developing a database and there are federal ORT task forces in several major cities (including Miami). ORT is also being prosecuted under the federal Interstate Transportation of Stolen Property statutes and the federal RICO statutes.¹² However, the FBI's unit chief for the major theft division has stated that "shoplifting does not become a crime until at least \$5,000 in stolen merchandise crosses state lines" and the "U.S. attorney general's offices don't prosecute unless the figure is \$50,000 or higher."¹³

It is unknown if ORT is prosecuted under Florida's RICO statutes. A violation of ch. 812, F.S., Florida's theft chapter, which includes the retail theft statute (s. 812.015, F.S.), is a listed violation under the definition of "racketeering activity" in s. 895.02(1), F.S. However, to prosecute under Florida's RICO statutes the prosecutor must prove the person committed any of the following acts:

- (1) With criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity¹⁴ or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- (2) Through a pattern of racketeering activity or through the collection of an unlawful debt, acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- (3) Is employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- (4) Conspired or endeavored to violate any of the provisions of subsection (1), subsection (2), or subsection (3).

Retail Theft Law in Florida

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.

Section 812.015(8), F.S., provides that retail theft in Florida is a third degree felony if the property stolen is valued at \$300 or more and the person:

¹² Testimony of Chris Swecker, Assistant Director of the FBI Criminal Investigative Division before the House Subcommittee on Crime, Terrorism, and Homeland Security (see footnote 6).

¹³ See footnote 5.

¹⁴ "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct. s. 895.02(4), F.S.

- (a) Individually, or in concert 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;
- (b) 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;
- (c) 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
- (d) 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.¹⁵

It is a second degree felony if the person commits retail theft and the person has previously been convicted of retail theft.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 812.815(9), F.S., to provide that it is a second degree felony to individually, or in concert with one or more persons, coordinate 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.

Section 2 amends s. 912.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to rank the new second degree felony and make conforming reference changes to the level 6 ranking of the current second degree felony for repeat retail theft. The sentencing range for a person who commits this offense and who has no prior record or additional offenses is a non-prison sanction to up to 15 years in state prison, the maximum penalty provided in s. 775.082, F.S., for a second degree felony. However, if the person also has additional offenses and/or a prior record, the lowest permissible sentence scored under the Code will likely be a state prison sentence (the length of the sentence depending on the person's particular criminal history).

Section 3 provides an effective date of October 1, 2007.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁵ This offense is ranked in Level 5 of the Criminal Punishment Code. The sentencing range for a person who commits this offense and who has no prior record or additional offenses is a non-prison sanction to up to 5 years in state prison, the maximum penalty provided in s. 775.082, F.S., for a third degree felony.

¹⁶ This offense is ranked in Level 6 of the Criminal Punishment Code. The sentencing range for a person who commits this offense and who has no prior record or additional offenses is a non-prison sanction to up to 15 years in state prison, the maximum penalty provided in s. 775.082, F.S., for a second degree felony.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may help retailers retain their property, thereby reducing their costs due to theft.

C. Government Sector Impact:

On March 6, 2007, the Criminal Justice Impact Conference estimated that the bill would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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