

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.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 714

INTRODUCER: Senator Joyner

SUBJECT: Theft

DATE: January 29, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|--------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | <u>Pre-meeting</u> |
| 2. | _____ | _____ | <u>ACJ</u> | _____ |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 714 increases the property value threshold (from \$100 to \$600) for first degree petit theft and third degree grand theft of property from a dwelling. The bill also increases the property value threshold (from \$300 to \$1,000) for third degree grand theft and retail theft. As a result of these changes, the value of property stolen must be greater than under current law to charge third degree grand theft of property from a dwelling, third degree grand theft, and retail theft, which are all third degree felonies (maximum penalty of 5 years in prison).

The bill also increases the property value range (from “\$100 or more, but less than \$300” to “from \$600 or more, but less than \$1,000”) for first degree petit theft and third degree grand theft of property from a dwelling.

The bill also authorizes the issuance of a notice to appear in lieu of arrest for some retail theft offenders, and authorizes state attorneys to create a retail theft diversion program for retail theft offenders who meet the criteria for issuance of a notice to appear.

II. Present Situation:

Theft

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant’s history of theft convictions or, in some cases, the type of property taken. 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.¹

Second degree petit theft, a second degree misdemeanor,² is theft of property valued at less than \$100.³ First degree petit theft, a first degree misdemeanor,⁴ is theft of property valued at \$100 or more but less than \$300.⁵ Petit theft incurs greater penalties if there is a prior theft conviction: a first degree misdemeanor if there is a prior conviction,⁶ and a third degree felony⁷ if there are two or more prior convictions.⁸

Third degree grand theft, a third degree felony, is: theft of property valued at \$300 or more but less than \$20,000; or theft of specified property (e.g., a firearm or fire extinguisher).⁹ Theft of property from a dwelling or its unenclosed curtilage is third degree grand theft, a third degree felony, if the property is valued at \$100 or more, but less than \$300.¹⁰

Second degree grand theft, a second degree felony,¹¹ is theft of:

- Property valued at \$20,000 or more but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or
- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.¹²

First degree grand theft, a first degree felony,¹³ is:

- Theft of property valued at \$100,000 or more;
- Theft of a semitrailer deployed by a law enforcement officer;
- Theft of cargo valued at \$50,000 or more in specified circumstances; or

¹ Section 812.014(1), F.S.

² 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.

³ Section 812.014(3)(a), F.S.

⁴ 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.

⁵ Section 812.014(2)(e), F.S.

⁶ Section 812.014(3)(b), F.S.

⁷ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S. However, if the third degree felony is not a forcible felony (excluding a third degree felony under ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. Section 775.082(10), F.S.

⁸ Section 812.014(3)(c), F.S.

⁹ Section 812.014(2)(c), F.S.

¹⁰ Section 812.014(3)(d), F.S.

¹¹ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹² Section 812.014(2)(b), F.S. However, this theft is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency. *Id.*

¹³ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

- Grand theft and, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.¹⁴

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.

Theft defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., 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).¹⁵ 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 \$3,000.¹⁶ The statute also requires a fine of not less than \$50 nor more than \$1,000 for a second or subsequent conviction for petit theft from a merchant¹⁷ and provides that it is a third degree felony to possess, or use or attempt to use, any antishoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise.¹⁸

Notice to Appear

Relevant to the theft provisions of the bill, a notice to appear is a written order issued by a law enforcement officer, in lieu of physical arrest, that requires a defendant to appear in a designated court on a specific date and time. When a person is arrested for a misdemeanor or a local ordinance, the officer may elect to issue the notice to appear unless:

- The accused fails or refuses to sufficiently identify himself or herself or supply the required information;
- The accused refuses to sign the notice to appear;
- The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to the accused or others;
- The accused has no ties with the jurisdiction reasonably sufficient to assure the accused's appearance or there is substantial risk that the accused will refuse to respond to the notice;

¹⁴ Section 812.014(2)(a), F.S.

¹⁵ Section 812.014(8), F.S.

¹⁶ Section 812.014(9), F.S.

¹⁷ Section 812.014(2), F.S.

¹⁸ Section 812.014(7), F.S.

- The officer has any suspicion that the accused may be wanted in any jurisdiction; or
- It appears that the accused previously has failed to respond to a notice or a summons or has violated the conditions of any pretrial release program.¹⁹

Even if the officer who makes the arrest does not issue a notice to appear, the booking officer at the local jail has that option available if he or she determines there is a likelihood that the defendant will appear in court based upon determinations made regarding the defendant's residence and length of residence in the community, family ties in the community, employment record, character and mental condition, past record of convictions, or past history of appearance at court proceedings.²⁰

If a defendant willfully fails to appear in court as directed by a notice to appear, he or she may be subject to imprisonment or a fine of up to the maximum on the underlying charge.²¹ The court may also hold the defendant in contempt for failure to appear.

Misdemeanor Case Diversion

A state attorney may enter into what is known as a deferred prosecution agreement with a defendant. This agreement requires that the defendant waive the right to a speedy trial in order to allow time to complete the terms of the agreement. Often the terms of the agreement are tailored to the specific offense committed and require community service work, restitution, costs, and other provisions. Upon completion of the terms of the agreement, the pending criminal case is disposed of by the state attorney. An example of such diversion is worthless check diversion. State attorneys may establish a worthless check case diversion program. Restitution and costs are paid by the worthless check defendant through this program and the defendant is required to attend a program designed to assist and educate him or her on the issue of bad check-writing.²²

III. Effect of Proposed Changes:

The bill amends ss. 812.014 and 812.015, F.S., to:

- Increase the property value threshold (from \$100 to \$600) for first degree petit theft and third degree grand theft of property from a dwelling; and
- Increase the property value threshold (from \$300 to \$1,000) for third degree grand theft and retail theft.

As a result of these changes, the value of property stolen must be greater than under current law to charge third degree grand theft of property from a dwelling, third degree grand theft, and retail theft, which are all third degree felonies (maximum penalty of 5 years in prison).

The bill also amends s. 812.014, F.S., to increase the property value range (from "\$100 or more, but less than \$300" to "from \$600 or more, but less than \$1,000") for first degree petit theft and third degree grand theft of property from a dwelling or its unenclosed curtilage.

¹⁹ Fla.R.Crim.P. Rule 3.125.

²⁰ *Id.*

²¹ Section 901.31, F.S.

²² Section 832.08, F.S.

The bill also amends s. 812.014, F.S., to authorize a law enforcement officer to issue a notice to appear in lieu of arrest if the officer has probable cause to believe the person has committed retail theft, the aggregate value of the merchandise stolen is less than \$1,000 (misdemeanor petit theft under the bill), and the defendant has no previous criminal convictions. The officer may lawfully detain the person until the person's identity and criminal history have been provided to the officer to allow the officer to make an informed decision regarding whether to issue the notice to appear in lieu of an arrest.

Further, a state attorney is authorized to establish a diversion program for defendants who meet the previously-noted criteria for issuance of a notice to appear. In addition to considering the misdemeanor defendant's clean record, the state attorney must consider:

- The value of the merchandise stolen in the retail theft;
- The existence of other pending complaints or criminal charges against the offender;
- The strength of the evidence of the retail theft; and
- The victim's input.

If the state attorney allows the offender to enter the retail theft diversion program, the state attorney must enter into a written agreement with the offender to divert him or her from prosecution for retail theft. The diversion agreement must include all of the following conditions, which must be accepted by the offender:

- Attendance and proof of completion of a program designed to assist, educate, and prevent future unlawful conduct by the offender;
- Full restitution of the value of the retail theft, if a value is established;
- Full payment of fees due;²³ and
- A knowing and intelligent waiver of his or her right to a speedy trial for the period of his or her diversion.

An offender who does not fulfill all of these conditions may be prosecuted for the crime of retail theft.

The bill makes conforming changes to s. 921.0022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to reflect changes in the description of theft and retail theft offenses amended by the bill. The bill does not change current offense severity level rankings for any offense.

The effective date of the bill is July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ The bill authorizes the state attorney to collect a fee from each participating offender to fund the retail theft diversion program. The fee may not exceed \$250.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the state attorney to collect a fee from each offender participating in a retail theft diversion program (as provided in the bill). The fee is to fund the retail theft diversion program. The fee may not exceed \$250.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. A preliminary estimate of provisions of the bill by the Legislature's Office of Economic and Demographic Research (EDR) is that the bill will have a negative significant impact (a decrease of more than 25 prison beds).

Per the Department of Corrections, in FY 2014-15, there were:

- 12,231 (adj.) offenders sentenced under s. 812.014(2)(c)(1), F.S. (property valued at \$300 or more but less than \$5,000) with 1,370 (adj.) of these offenders sentenced to prison (mean sentence length of 23.5 months and incarceration rate of 11.2 percent adj-11.2 percent unadj);
- 183 (adj.) offenders sentenced under s. 812.014(2)(d), F.S. (property valued at \$100 or more but less than \$300 is taken from a dwelling or its curtilage) with 37 (adj.) of these offenders sentenced to prison (mean sentence length of 21.0 months and incarceration rate of 20.0 percent adj-20.2 percent unadj); and
- 383 (adj.) offenders sentenced under s. 812.015(8), F.S. (third degree felony retail theft) with 77 (adj.) of these offenders sentenced to prison (mean sentence length of 27.7 months and incarceration rate of 20.1 percent adj-20.1 percent unadj).

The number of offenders that currently fall within the proposed changes to ss. 812.014(2)(c)(1) and s. 812.015(8), F.S., thresholds cannot be differentiated from the current thresholds. However, 37 offenders were sentenced to prison under s. 812.014(2)(d), F.S. (\$100 to \$300), which would not include these offenders within the parameters of the current bill (\$600 to \$1,000). That change alone would be a significant effect. Although the other changes to this portion of the bill cannot be quantified, there is expected to be a significant overall effect on prison beds.

This bill also creates the ability for a state attorney to establish a retail theft diversion program. However, this program would only apply to offenders that fall under the newly established minimum threshold property value of \$1,000 for third degree felony retail theft. Therefore, this would not have an additional impact on prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Relevant to the bill, the last time the Legislature increased the threshold property value for felony grand theft was in 1986.²⁴ At that time, the value was increased from \$100 to \$300.

According to the National Conference of State Legislatures, the majority of states (30 states) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft.²⁵

VIII. Statutes Affected:

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

This bill reenacts provisions of section 943.051 of the Florida Statutes.

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.

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

²⁴ Ch. 86-161, sec. 1, L.O.F.

²⁵ Lawrence, Alison. *Making Sense of Sentencing: State Systems and Policies* (June 2015), National Conference of State Legislatures, available at <http://www.ncsl.org/documents/cj/sentencing.pdf> (last visited on January 26, 2015).