

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: CS/SB 608

INTRODUCER: Criminal Justice Committee and Senator Clemens

SUBJECT: Decreasing Penalties for Certain Criminal Acts

DATE: March 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Fav/CS
2.			TR	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 608 reduces criminal penalties for numerous offenses. Most of these offenses are misdemeanor traffic violations. Generally, the bill reduces first degree misdemeanors to second degree misdemeanors and second degree misdemeanors to noncriminal violations.

The bill reduces the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses. The bill also repeals provisions allowing an individual to petition the Department of Highway Safety and Motor Vehicles (DHSMV) for a hardship license after six months of his or her suspension because the bill reduces the suspension period to six months.

The bill also makes the following changes regarding theft offenses:

- Increases the property value threshold for grand theft from \$300 to \$1,000;
- Increases the maximum property threshold from “less than \$300” to “less than \$1,000” for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree;
- Punishes theft of a will or stop sign based on value of these items, in contrast to current law which punishes the theft as a third degree felony; and
- Repeals the third degree felony offense of petit theft with two or more prior theft convictions.

The bill also increases the threshold amount for felony worthless check offenses from \$150 to \$500.

The Criminal Justice Impact Conference (CJIC) reviewed the original bill and determined that removing felony penalties for petit theft with two or more prior convictions will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs and \$75,724,396 in annual fixed capital outlay costs). The CJIC determined that the overall prison bed impact of the bill will at least be the decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022. Changes to the original bill will require additional review by the CJIC but those changes should not affect the CJIC's estimate regarding the petit theft changes.

II. Present Situation:

The bill amends numerous sections of the Florida Statutes. A summary of those sections is provided in the "Effect of Proposed Changes" section of this analysis.

III. Effect of Proposed Changes:

The bill, which takes effect July 1, 2017, reduces punishment for several misdemeanors, reduces the length of the driver license suspension period for certain drug offenders, and revises penalties or threshold property value amounts relevant to several theft and worthless check offenses. A description of the statutes amended and the changes to those statutes made by the bill is provided below.

White Cane Offense (Section 1)

Current Law: Section 316.1301(1), F.S., provides that it is a second degree misdemeanor for a person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

Proposed Changes: Section 1 of the bill repeals s. 316.1301(1), F.S., thereby eliminating this white cane offense.

Violations Relating to Windshields, Windows, and Sunscreening Material (Section 2)

Current Law: Section 316.2956(3), F.S., provides that it is a second degree misdemeanor for a person to sell or install sunscreening material in violation of any provision of ss. 316.2951-316.2955, F.S. (requirements relating to motor vehicle windows, windshields, and window sunscreening).

Proposed Changes: Section 2 of the bill amends s. 316.2956(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Invalid Motor Vehicle Insurance (Section 3)

Current Law: Section 324.022, F.S., requires every registered owner or operator of a motor vehicle to maintain property insurance. Section 324.023, F.S., requires a registered owner or

operator of a motor vehicle to have liability insurance for bodily injury or death for a specified period if the owner or operator has pled guilty or nolo contendere or has been convicted of driving under the influence. Unless an exception applies, s. 627.733, F.S., requires every owner or registrant of a motor vehicle to maintain personal injury protection insurance.

Section 316.646(1), F.S., provides that any person required to maintain insurance under s. 324.022, F.S., s. 324.023, F.S., or s. 627.733, F.S., shall have in his or her immediate possession at all times while operating the motor vehicle proper proof of maintenance of the required insurance. Section 316.646(4), F.S., provides that any person presenting proof of insurance as required by s. 316.646(1), F.S., who knows that the insurance as represented by the proof of insurance is not currently in force commits a first degree misdemeanor.

Proposed Changes: Section 3 of the bill amends s. 316.646(4), F.S., to reduce punishment for a violation of this subsection from a first degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Refusal to Accept and Sign a Traffic Summons (Section 4)

Current Law: Unless an exception applies, s. 318.14(2), F.S., provides that any person cited for a traffic infraction listed in s. 318.19, F.S., that requires a mandatory hearing or any other criminal traffic violation listed in ch. 316, F.S. (the Florida Uniform Traffic Law) must sign and accept a citation indicating a promise to appear (summons). Section 318.14(3), F.S., provides that any person who willfully refuses to accept and sign a summons as provided in s. 318.14(2), F.S., commits a second degree misdemeanor.

Proposed Changes: Section 4 of the bill amends s. 318.14(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Issuance of a Commercial License (Section 5)

Current Law: Section 322.03(b), F.S., provides that, except as provided in s. 322.03(3)(c), F.S., it is a first degree misdemeanor for a Florida resident who is required by Florida law to possess a commercial driver license to operate a commercial motor vehicle in Florida unless he or she possesses a valid Florida commercial driver license. Section 322.03(3)(c), F.S., provides that it is a nonmoving violation for a person whose commercial driver license has expired for a period of 30 days or less to drive a commercial motor vehicle in Florida.

Proposed Changes: Section 5 of the bill amends s. 322.03(3)(c), F.S., to reduce the punishment for a violation of this paragraph from a first degree misdemeanor to a second degree misdemeanor. It also amends s. 322.03(3)(b) and (c), F.S., to replace the term “is guilty of” with “commits.” This is only a technical change to use more contemporary wording regarding the penalties in these paragraphs. The bill does not make any substantive change to the offense or its penalty in s. 322.03(3)(c), F.S.

Restricted Driver License for Business or Employment Purposes (Section 6)

Current Law: Federal law requires the state to enact and enforce a “law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception[,]” the driver license of any individual convicted of any drug offense be suspended for at least six months.¹ A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the state governor submits both written certification stating he is opposed to the enforcement of this law and certification from the state legislature that it has adopted a resolution expressing opposition to the law. As of December 2016, 38 states either have eliminated automatic driver license suspensions for drug convictions or have passed a resolution to opt-out of this law.²

Pursuant to s. 322.055, F.S., the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the driver license of a person 18 years or older who is convicted of a drug offense. The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the Department of Highway Safety and Motor Vehicles to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months.

Proposed Changes: Section 6 of the bill³ amends s. 322.055, F.S., to reduce the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses. Section 6 of the bill also deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.

Sale of Alcoholic Beverages (Section 7)

Current Law: Section 562.14(1), F.S., provides that, except as otherwise provided by county or municipal ordinance, alcoholic beverages may not be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the Division of Alcoholic Beverages and Tobacco⁴ between the hours of midnight and 7 a.m. of the following day, unless an exception applies.⁵

Section 562.14(2), F.S., provides that, except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor’s licensed premises and whose principal business is the sale of

¹ 23 U.S.C. s. 159(a)(3)(A).

² Prison Policy Initiative, *Reinstating Common Sense: How driver’s license suspensions for drug offenses unrelated to driving are falling out of favor* (Dec. 2016), available at https://www.prisonpolicy.org/driving/national.html#recent_reforms (last visited March 6, 2017).

³ Section 6 of the bill is identical to Section 6 of CS/SB 302 (2017).

⁴ The Division of Alcoholic Beverages and Tobacco is part of the Florida Department of Business and Professional Regulation. Section 20.165(2)(b), F.S.

⁵ This section does not apply to railroads selling only to passengers for consumption on railroad cars. Section 562.14(1), F.S.

alcoholic beverages shall allow the licensed premises to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited.⁶

Pursuant to s. 562.14(4), F.S., a violation of s. 562.14(1) or (2), F.S., is a second degree misdemeanor.

Proposed Changes: Section 7 of the bill amends s. 562.14, F.S., to reduce punishment for a violation of s. 562.14(1), F.S., from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S. A violation of s. 562.14(2), F.S., continues to be a second degree misdemeanor but the punishment language for that violation is moved from subsection (4) to subsection (2), and subsection (4) is repealed.

Habitual Drunkards (Section 8)

Current Law: Section 562.50, F.S., provides that it is a second degree misdemeanor for any person to sell, give away, dispose of, exchange, or barter any alcoholic beverage or other specified intoxicants to any person habitually addicted to the use of any intoxicating liquor, after having been given written notice by wife, husband, or a specified relative that this addicted person is an habitual drunkard and that the use of intoxicating drink is injuring the addicted person or the person giving written notice.

Proposed Changes: Section 8 of the bill amends s. 562.50, F.S., to reduce punishment for a violation of this section from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Grand Theft and Petit Theft (Section 9)

Current Law: Section 812.014(2)(c), F.S., generally provides that, when a theft is based on property value, the threshold property value for grand theft of the third degree, a third degree felony, is \$300. However, under s. 812.014(2)(d), F.S., it is also grand theft of the third degree, a third degree felony, when the property stolen is valued at \$100 or more but less than \$300, and is taken from a dwelling or the unenclosed curtilage of a dwelling.

Further, under s. 812.014(2)(c), F.S., theft of some property constitutes grand theft of the third degree, a third degree felony, regardless of value. Examples of such items include:

- A will, codicil, or other testamentary instrument.
- Any stop sign.

Section 812.014(2)(e) F.S., provides that, except as provided in s. 812.014(2)(d), F.S., if the property stolen is valued at \$100 or more but less than \$300, the offender commits petit theft of the first degree, a first degree misdemeanor. Section 812.014(3)(a), F.S., which is theft of any property not specified in s. 812.014(2), F.S., is petit theft of the second degree, a second degree misdemeanor.

⁶ This prohibition does not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex or an entertainment/resort complex. Section 562.14(2), F.S.

Section 812.014(3)(b), F.S., provides that it is first degree misdemeanor to commit petit theft if the person committing the petit theft has previously been convicted of any theft. Section 812.014(3)(c), F.S., provides that it is third degree felony to commit petit theft if the person committing the petit theft has previously been convicted two or more times of any theft.

Proposed Changes: Section 9 of the bill amends the property value threshold for grand theft of the third degree under s. 812.014(2)(c), F.S. It increases this threshold from \$300 to \$1,000. Therefore, many thefts that would constitute grand theft of the third degree under the current threshold of \$300 would constitute petit theft if the revised threshold were to become law.

Consistent with increasing the minimum threshold for grand theft to \$1,000, section 9 of the bill also amends s. 812.014(2)(d) and (e), F.S., to increase the maximum property value for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree from “less than \$300” to “less than \$1,000.”

Section 9 of the bill also amends s. 812.014(2)(c), F.S., to remove the listing of the following property for which theft of that property would constitute grand theft of the third degree, regardless of its value:

- A will, codicil, or other testamentary instrument.
- Any stop sign.

Theft of a will, codicil, or other testamentary instrument, and theft of a stop sign would no longer necessarily be third degree felonies. The degree of the crime would depend on the value of the property and might constitute misdemeanor petit theft.

Finally, section 9 of the bill repeals s. 812.014(3)(c), F.S. (petit theft with two or more prior theft convictions). Section 812.014(3)(b), F.S., which is not amended by the bill, will punish petit theft with prior theft convictions as a first degree misdemeanor.

Worthless Checks, Drafts, or Debit Card Orders (Sections 10 and 11)

Current Law: Section 832.05(2)(a), F.S., provides, in part, that it is unlawful to draft or issue a check, draft, or debit card order, knowing there are insufficient funds or credit. Section 832.05(2)(b), F.S., provides that a violation of s. 832.05(2)(a), F.S., is a first degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more and the payee receives something of value.

Section 832.05(4)(a), F.S., provides, in part, that it is unlawful to receive anything of value by means of a worthless check or draft knowing there are insufficient funds or credit. Section 832.05(4)(b), F.S., makes it unlawful to use a debit card to obtain anything of value, knowing there are insufficient funds or credit. Section 832.05(4)(c), F.S., provides that a violation of s. 832.05(4), F.S., is a first degree misdemeanor, if the check, draft, or debit card order is less than \$150. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more.

Section 832.062(1), F.S., provides, in part, that is unlawful to draft or issue to the Department of Revenue any check or draft, or to use a debit card, to make any electronic funds transfer for the

payment of any taxes, penalties, interest, fees, or associated amounts administered by the department, knowing that there are insufficient funds or credit. Section 832.062(2), F.S., provides that a violation of s. 832.062, F.S., is a second degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more.

Proposed Changes: Section 10 of the bill amends s. 832.05, F.S., to increase the threshold amount for felony worthless check offenses in s. 832.05(2)(a) and (4)(a), F.S., from \$150 to \$500, and to increase the maximum threshold for a misdemeanor violation of s. 832.05(4)(a), F.S., from “less than \$150” to “less than \$500.”

Section 11 of the bill amends s. 832.062, F.S., to increase the threshold amount for the felony worthless check offenses in s. 832.062(1), F.S., from \$150 to \$500.

Technical Changes and Reenactment of Statutes (Sections 12-31)

Section 12 of the bill amends s. 922.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to correct referencing and descriptions of offenses to reflect changes made to s. 812.014, F.S., by section 9 of the bill. Sections 13-31 reenact the following sections of the Florida Statutes: 95.18, 318.18, 318.21, 320.02, 373.6055, 400.9935, 409.910, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 812.015, 812.0155, 812.14, and 893.138. These reenactments are intended to incorporate amendments made to statutes that are referenced in the reenacted provisions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed the originally filed bill, and determined that removing the felony penalty for petit theft with two or more prior theft convictions (section 9 of the bill) will result in a significant prison bed decrease (see details below). The CJIC determined that the overall prison bed impact of the bill will at least be the specific bed impact resulting from this change.⁷ Changes to the original bill⁸ will require additional review by the CJIC but those changes should not affect the CJIC's estimate regarding the petit theft changes.

The CJIC's estimate is that there will be a significant decrease in prison beds if the petit theft with prior theft convictions is no longer punished as a third degree felony.⁹ The CJIC estimates this change will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs¹⁰ and \$75,724,396 in annual fixed capital outlay costs¹¹).

The remainder of the changes to s. 812.014, F.S., will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds). Per the DOC, in FY 2015-2016, there were 11,028 (adj.)¹² offenders sentenced under s. 812.014(2)(c)(1), F.S. (grand theft of the third degree). Of the 11,028 (adj.) offenders, 1,273 (adj.) were sentenced to prison. Their mean sentence length was 25.9 months. The incarceration rate was 11.5 percent (adj. or unadj.). The number of offenders that currently fall within the proposed changes to s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds.

⁷ Telephonic communication between staff of the Senate Committee on Criminal Justice and staff of the Office of Economic and Demographic Research (EDR) (March 6, 2017).

⁸ For example, unlike the original bill, the committee substitute amends ss. 832.05 and 832.062, F.S., to increase the threshold amount for felony worthless check offenses from \$150 to \$500. This change has not yet been reviewed by the CJIC.

⁹ An impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.

¹⁰ "FY 2015-16 operating costs per inmate were obtained from DOC. The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference." See "SB 608" link for "Criminal Justice Impact Conference Narrative Analyses of Adopted Impacts" (updated through March 2, 2017), Office of Economic and Demographic Research (EDR), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited on March 7, 2017). All further CJIC estimate information is from this source.

¹¹ "FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc."

¹² The abbreviation "adj." means "adjusted." The abbreviation "unadj." means "unadjusted." Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

Per the DOC, in FY 2015-2016, the 2 (adj.) offenders sentenced for theft of a will did not receive a prison sentence. One offender was sentenced for theft of a stop sign, and that offender received a 22-month prison sentence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1301, 316.2956, 316.646, 318.14, 322.03, 322.055, 562.14, 562.50, 812.014, 832.05, 832.062, and 921.022.

This bill also reenacts the following sections of the Florida Statutes: 95.18, 318.18, 318.21, 320.02, 373.6055, 400.9935, 409.910, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 812.015, 812.0155, 812.14, and 893.138. These reenactments are intended to correct cross-references and to incorporate amendments made to statutes that are referenced in the reenacted provisions.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 6, 2017:

The CS:

- Removes sections of the bill that reduce criminal penalties for violations of s. 316.061, F.S. (crashes involving damage to vehicles or property), s. 316.545, F.S. (violations relating to motor vehicle weighing), s. 319.33, F.S. (invalid motor vehicle insurance), s. 562.111, F.S. (possession of alcoholic beverages by person under age 21), and s. 893.13, F.S. (possession of 20 grams or less of cannabis).
- Reduces the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses.
- Repeals provisions allowing individuals to petition the Department of Highway Safety and Motor Vehicles for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.
- Increases the maximum property threshold from “less than \$300” to “less than \$1,000” for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree.
- Punishes theft of a stop sign based on the value of the item, in contrast to current law which punishes the theft as a third degree felony.
- Repeals the third degree felony offense of petit theft with two or more prior theft convictions.

- Deletes proposed changes to penalties for theft of a commercially farmed animal, a bee colony, aquacultural species, and a fire extinguisher.
- Increases the threshold amount for felony worthless check offenses from \$150 to \$500.

B. Amendments:

None.

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