

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 713 Theft Offenses
SPONSOR(S): Justice Appropriations Subcommittee, Donalds
TIED BILLS: IDEN./SIM. **BILLS:** SB 928

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 2 N	Painter	Sumner
2) Justice Appropriations Subcommittee	11 Y, 1 N, As CS	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 the use of the property.

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

- 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.

CS/HB 713 increases the minimum threshold values for the following theft and retail theft crimes:

- 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 unenclosed 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 deletes several items from the list of stolen property that constitutes third degree grand theft, punishable as a third degree felony. The bill provides that enhanced penalties for theft and retail theft offenses only apply if the offender has a prior theft or retail theft conviction as an adult and the offense occurs within three years of the expiration of the sentence for the prior conviction.

The bill directs the Office of Economic and Demographic Research to recalculate the theft thresholds in ss. 812.014 and 812.015, F.S., every five years based on the increases in the Consumer Price Index over that time. The Division of Law Revision and Information will prepare a reviser's bill to update the statutes with the recalculated thresholds.

The Criminal Justice Impact Conference met on January 8, 2018, and determined a prior version of the bill would significantly decrease the need for prison beds.

The bill provides an effective date of July 1, 2018.

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 property¹; 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.²

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 offender, the offender's history of theft convictions or, in some cases, the type of property taken. 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 ³
	≥ \$20,000, but < \$100,000	Second Degree Felony ⁴
	≥ \$10,000, but < \$20,000	Third Degree Felony ⁵
	≥ \$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 of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$300	First Degree Misdemeanor ⁶
	< \$100	Second Degree Misdemeanor ⁷

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior convictions. Specifically:

- A person who has previously been convicted of any theft, who commits petit theft, commits a first degree misdemeanor.⁸
- A person who has been previously convicted of theft two or more times, who commits a petit theft, commits a third degree felony.⁹

¹ S. 812.014(1)(a), F.S.

² S. 812.014(1)(b), F.S.

³ A first degree felony is punishable by up to 30 years imprisonment and a \$100,000 fine. SS. 775.082(3)(b)1 and 775.083(1)(b), F.S.

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ S. 812.014(3)(b), F.S.

⁹ S. 812.014(3)(c), F.S.

Florida last increased the minimum threshold property value for third degree grand theft in 1986.¹⁰ The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.¹¹ The petit theft provisions were amended, including the thresholds, in 1996.¹²

Retail Theft

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

- 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.¹³

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

- 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 the offense of retail theft where the stolen property has a value in excess of \$3,000.¹⁴

The thresholds for third degree felony retail theft were created in 2001.¹⁵

Inmate and Probation Population in Florida for Theft Crimes

There are approximately 7,000 people in Florida prisons for theft crime.¹⁶ Of these 7,000 inmates:

- 603 are incarcerated for petit theft enhanced due to two or more prior theft convictions;
- 53 are incarcerated for retail theft of \$300 or more; and
- 1,136 are incarcerated for grand theft of \$300 or more but less than \$5,000.¹⁷

There are approximately 47,000 people on probation with the Florida Department of Corrections for theft crime.¹⁸ Out of those 47,000 individuals:

- 1,393 are on probation for petit thefts enhanced due to prior theft convictions;

¹⁰ Ch. 86-161, s. 1, L.O.F.

¹¹ Ch. 96-388, s. 49, L.O.F.

¹² Ch. 96-388, s. 49, L.O.F.

¹³ S. 812.015(1)(d), F.S.

¹⁴ S. 812.015(9), F.S.

¹⁵ Ch. 2001-115, s. 6, L.O.F.

¹⁶ Email from Florida Department of Corrections, December 18, 2017 (on file with Criminal Justice Subcommittee).

¹⁷ Id. For inmate populations as of December 15, 2017.

¹⁸ Supra, FN 17.

- 195 are on probation for retail theft of \$300 or more; and
- 13,895 are on probation for grand theft of \$300 or more but less than \$5,000.¹⁹

Theft Thresholds in Other States

Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.²⁰

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

¹⁹ Supra, FN 17.

²⁰ Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited January 4, 2018).

	Texas	\$1,500	\$2,500
2016	Alaska	\$750	\$1,000
	Hawaii	\$300	\$750
	Kansas	\$1,000	\$1,500
	Maryland	\$1,000	\$1,500
	Oklahoma	\$500	\$1,000
	Tennessee	\$500	\$1,000

The majority of states (30) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.²¹

Value Threshold	States	Total Number
\$200	NJ, VA	2
\$250	MA	1
\$300	FL	1
\$500	IL, KY, NM	3
\$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
\$1,500	AL, DE, GA, KS, MD, MT, NE, RI, UT	9
\$2,000	CO, CT, PA, SC	4
\$2,500	TX, WI	2

Twenty-three of the states that changed felony theft thresholds between 2001 and 2011 were examined and found:

- 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 was not correlated with the state's property crime and larceny rates.²²

Effect of the Proposed Changes

Property Theft

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

Offense	Current Threshold	Proposed Threshold
Second degree petit theft	< \$100	< \$500
First degree petit theft	≥ \$100, but < \$300	≥ \$500, but < \$1,000 ²³
Third degree grand theft	≥ \$300, but < \$20,000	≥ \$1,000, but < \$20,000 ²⁴

²¹ Id.

²² Supra, FN 20.

²³ 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 \$159.76 in 2017 dollars and \$300 in 1996 has the same buying power as \$479.28 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

Third degree grand theft of property from a dwelling or its enclosed curtilage	≥ \$100, but < \$300	≥ \$1,000, but < \$5,000 ²⁵
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The bill also deletes the following items from the list of property which, if stolen, is a third degree grand theft and is punishable as a third degree felony:

- A will, codicil, or other testamentary instrument;
- Any fire extinguisher;
- Property taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d);
- Any stop sign; and
- Anhydrous ammonia²⁶

The deletion of these items from the property list would result in the offense level of the crime being based on the property value rather than automatically qualifying as a third degree grand theft.

The bill also amends the enhancement of the statute. Petit theft becomes a third-degree felony only if:

- The offender has two or more prior theft convictions as an adult; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's sentence for the most recent theft conviction.

Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from \$300 or more, to \$1,000 or more.²⁷ The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft as an adult; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's sentence for the most recent retail theft conviction.

Other

The bill instructs the Office of Economic and Demographic Research (EDR) to recalculate the theft thresholds in ss. 812.014 and 812.015, F.S., every five years and adjust the thresholds in an amount equal to the annual increases over that time in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. EDR is directed to round to the nearest \$50, and publish the adjusted amounts on its website by July 1 of every fifth year, to take effect on October 1 of that year. EDR must certify the revised amounts to the Division of Law Revision and Information. The division must then prepare a reviser's bill to amend the statutes with the recalculated amounts.

Lastly, 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, 2018.

B. SECTION DIRECTORY:

Section 1: Amends 812.014, F.S., relating to theft.

²⁴ 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 \$675.19 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

²⁵ Supra, FN 24.

²⁶ Anhydrous ammonia is a colorless gas used as an agricultural fertilizer and industrial refrigerant, according to the Centers for Disease Control and Prevention, available at: <https://www.cdc.gov/healthcommunication/toolstemplates/entertained/tips/AnhydrousAmmonia.html> (last visited January 6, 2018).

²⁷ According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$422.62 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

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

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

Section 4: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered a similar version of the bill on January 8, 2018, and determined that the bill would significantly reduce the need for prison beds.

Per FDC, in FY 16-17 there were 14,630 offenders sentenced under ss. 812.014(2)(c)1, 812.014(2)(d), 812.014(3)(c), and 812.015(8), F.S. with 1,654 of these offenders sentenced to prison. The available data cannot determine exactly how many offenders would be impacted by the proposed changes.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁸ Department of Economic and Demographic Research, SB 928 – Theft (Similar HB 713), “Criminal Justice Impact Conference”, January 8, 2018.

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Lowered the upper threshold for first degree petit theft from \$1,500 to \$1,000
- Lowered the lower threshold for third degree grand theft and third degree grand theft of property from a dwelling or its enclosed curtilage from \$1,500 to \$1,000.
- Added instructions for the Department of Economic and Demographic Research to recalculate and adjust the theft thresholds in ss. 812.014 and 812.015, F.S. every 5 years, and certify the results to the Division of Law Revision and Information. The division must then prepare a reviser's bill to amend the statutes with the recalculated amounts.

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