

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 833 Retail Theft  
**SPONSOR(S):** Criminal Justice Subcommittee; Harrell  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1040

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

Theft is as a misdemeanor or felony depending on the value of the property taken. It is a misdemeanor petit theft for theft of less than \$300. A person previously convicted of misdemeanor petit theft two or more times commits a third degree felony petit theft for any third or subsequent offense. If theft is committed as part of a systematic and ongoing course of conduct, the offense may constitute organized scheme to defraud.

Florida law defines scheme to defraud as a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act. The penalties for organized scheme to defraud depend on the value of the property taken. It is a:

- Third degree felony if the value is less than \$20,000.
- Second degree felony if the value is greater than \$20,000 but less than \$50,000.
- First degree felony if the value is \$50,000 or greater.

Organized retail theft ("ORT") is the large-scale theft of retail merchandise with the intent to resell the merchandise for financial gain. ORT typically involves a criminal enterprise using a group of individuals who steal large quantities of merchandise from a number of stores, and fencing operations that then convert the stolen merchandise into cash.

In 1997, the legislature enacted the Criminal Punishment Code (CPC) scoresheet to use in sentencing felony offenders. Felony offenses subject to the CPC are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). The points assigned from the felony offense level are used to determine an offender's lowest permissible sentence in prison months.

CS/HB 833 amends the CPC scoresheet to increase the offense levels of petit theft, third or subsequent offense, third degree felony organized scheme to defraud, and second degree felony organized scheme to defraud. The offense levels are changed as follows:

- Petit theft, third or subsequent offense, from level 1 to level 4.
- Third degree felony organized scheme to defraud from level 3 to level 4.
- Second degree felony organized scheme to defraud from level 5 to level 6.

The bill will have an indeterminate positive impact by increasing the need for prison beds as a result of potentially greater prison sentences.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0833a.CRJ

**DATE:** 1/30/2018

## FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Criminal Punishment Code Scoresheet

In 1997, the legislature enacted the Criminal Punishment Code<sup>1</sup> (CPC) as Florida's "primary sentencing policy."<sup>2</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).<sup>3</sup> Level 1 is the least severe and level 10 is the most severe. Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury points or domestic violence in the presence of a child.<sup>4</sup>

If an offender has less than 22 points then the judge must impose a non-prison sentence.<sup>5</sup> If the offender has more than 22 points, but less than 44, then the judge has discretion to impose a prison or non-prison sentence.<sup>6</sup> If an offender has more than 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>7</sup> A sentencing judge would then have discretion to sentence an offender anywhere between the lowest permissible sentence and the statutory maximum. The statutory maximum for a first degree felony<sup>8</sup> is thirty years, a second degree felony<sup>9</sup> is fifteen years, and a third degree felony<sup>10</sup> is five years.

##### 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 property<sup>11</sup>; 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.<sup>12</sup>

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.

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<sup>1</sup> SS. 921.002-921.0027, F.S.

<sup>2</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2016-2017)* (Executive Summary), Florida Department of Corrections, available at: [http://www.dc.state.fl.us/pub/sg\\_annual/sg\\_annual-1617.pdf](http://www.dc.state.fl.us/pub/sg_annual/sg_annual-1617.pdf) (last visited January 23, 2018).

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> S. 921.0022, F.S.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> S. 775.082(3)(b)1, F.S.

<sup>9</sup> S. 775.082(3)(d), F.S.

<sup>10</sup> S. 775.082(3)(e), F.S.

<sup>11</sup> S. 812.014(1)(a), F.S.

<sup>12</sup> S. 812.014(1)(b), F.S.

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 <sup>13</sup>
	≥ \$20,000, but < \$100,000	Second Degree Felony <sup>14</sup>
	≥ \$10,000, but < \$20,000	Third Degree Felony <sup>15</sup>
	≥ \$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 <sup>16</sup>
	< \$100	Second Degree Misdemeanor <sup>17</sup>

#### *Enhancement of Petit Theft and the CPC Offense Level*

Section 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.<sup>18</sup>
- A person who has been previously convicted of theft two or more times, who commits a petit theft, commits a third degree felony.<sup>19</sup>

The CPC offense level for a petit theft, third or subsequent offense is level 1. This means it is considered the least severe felony offense. A level 1 primary offense will constitute 4 points on an offender's scoresheet.

#### Organized Scheme to Defraud

It is a felony offense for a person to obtain property as a result of a scheme to defraud. Florida law defines scheme to defraud as a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons<sup>20</sup> by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.<sup>21</sup>

The penalties for organized scheme to defraud depend on the value of the property taken. It is a:

- Third degree felony if the value is less than \$20,000.<sup>22</sup>
- Second degree felony if the value is greater than \$20,000 but less than \$50,000.<sup>23</sup>

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> S. 812.014(3)(b), F.S.

<sup>19</sup> S. 812.014(3)(c), F.S.

<sup>20</sup> A person includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. S. 1.01(3), F.S.

<sup>21</sup> S. 817.034(1)(d), F.S.

<sup>22</sup> S. 817.034(4)(a)1, F.S.

<sup>23</sup> S. 817.034(4)(a)2, F.S.

- First degree felony if the value is \$50,000 or greater.<sup>24</sup>

### CPC Offense Level of Organized Scheme to Defraud

The CPC offense level of organized scheme to defraud depends on the felony offense level committed.

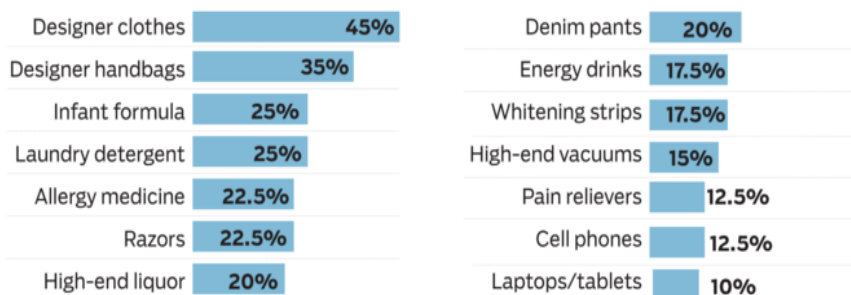
Felony Degree of Organized Scheme to Defraud	Value of Property Taken	Offense Level	Corresponding Points
Third-degree felony organized scheme to defraud	Less than \$20,000	3	16
Second-degree felony organized scheme to defraud	\$20,000 or more but less than \$50,000	5	28
First-degree organized scheme to defraud	\$50,000 or more	7	56

### Organized Retail Theft

Organized retail theft (or "ORT") refers to large-scale retail theft and fraud by organized groups of professional shoplifters, or "boosters,"<sup>25</sup> and includes a variety of retail crimes, including theft, gift card fraud, receipt fraud, ticket switching,<sup>26</sup> and cargo theft. A "booster" is someone who steals merchandise and then sells it to a fence for a profit.<sup>27</sup> A "fence" is someone who knowingly buys illegally obtained goods and then sells the goods for a profit.<sup>28</sup> ORT groups resell illegally acquired merchandise through a variety of "fencing" operations, such as flea markets, swap meets, pawn shops, and online marketplaces.<sup>29</sup> Popular goods for "boosters" to steal include baby formula, allergy medicine, and pregnancy tests.<sup>30</sup> According to the National Retail Federation ("NRF"), the most popular items stolen in organized retail theft are as follows:<sup>31</sup>

### Most popular items stolen in organized retail crimes

Organized retail crime rings target both high-end goods and common household items. These are the top items stolen by organized rings, according to retailers surveyed by the National Retail Federation. The percentages show the share of respondents who said the item was frequently stolen.



SOURCE: National Retail Federation

<sup>24</sup> S. 817.034(4)(a)3, F.S.

<sup>25</sup> Kristin M. Finklea, *Congressional Research Service, Organized Retail Crime* (December 11, 2012), available at: <https://fas.org/sqp/crs/misc/R41118.pdf> (last visited January 29, 2018).

<sup>26</sup> *Id.* at FN 1. Ticket switching involves thieves utilizing devices that create fake barcodes that they adhere to packages, covering the original barcodes. When scanned, these new barcodes ring up items at lower prices than their retail values.

<sup>27</sup> *Supra*, FN 1, Finklea.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Email from Florida Retail Federation, December 18, 2017, (on file with Criminal Justice Subcommittee). See also Loss Prevention Media Insider, *2017 Survey Reveals Organized Retail Crime's Top Stolen Items*, available at: <http://losspreventionmedia.com/insider/shoplifting-organized-retail-crime/2017-survey-reveals-organized-retail-crimes-top-stolen-items/> (last visited January 29, 2018).

ORT costs the retail industry approximately \$30 billion nationally each year.<sup>32</sup> ORT affected 97 percent of the 67 American retailers surveyed by the NRF in 2015, and four out of five of those retailers said the problem is getting worse.<sup>33</sup>

ORT is a threat to retail workers, with a number of retailers reporting incidents such as smash-and-grab robberies or the use of pepper spray.<sup>34</sup> Losses from ORT increase costs for retailers and, in turn, increase prices for consumers. Also, the theft and re-sale of items like non-prescription drugs or baby formula, which might be stored improperly, sold after expiration or "cut" into larger quantities, create health risks to the public.<sup>35</sup>

Florida has seen several instances of ORT. In December 2017, five suspects were arrested for an organized felony theft ring.<sup>36</sup> Members of the theft ring are believed to be responsible for the theft of about \$10,000 a month from stores throughout Central Florida and a combined theft of \$360,000 from retail stores including Walmart, Target and Publix in Volusia and Seminole counties and a sports retail store in Lake Mary.<sup>37</sup> It is believed the theft ring has been in operation since 2013.<sup>38</sup> Also in December 2017, two individuals were arrested and two more wanted in connection with the theft of almost \$222,000 of merchandise from Home Depot stores in Polk, Hillsborough, Lake, Orange, Osceola, and Seminole counties over a year-long period.<sup>39</sup>

## Effect of Proposed Changes

### Criminal Punishment Code Scoresheet

CS/HB 833 amends s. 921.0022(3), F.S., to increase the CPC scoresheet offense level for:

- Petit theft, third or subsequent offense;
- Third degree felony organized scheme to defraud; and
- Second degree felony organized scheme to defraud.

For petit theft, third or subsequent offense, the bill increases the offense level from level one (4 points) to level four (22 points). This will likely lead to more prison sentences for offenders convicted of petit theft for a third or subsequent time.

The bill increases third degree organized scheme to defraud from level three (16 points) to level 4 (22 points). For second degree felony organized scheme to defraud, the offense level is increased from level five (28 points) to level six (36 points). The increase in the felony offense level will likely lead to longer and more frequent prison sentences for offenders convicted of organized scheme to defraud.

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

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 912.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

<sup>32</sup> According to the National Retail Federation, available at: <https://nrf.com/advocacy/policy-agenda/organized-retail-crime> (last visited January 25, 2018).

<sup>33</sup> Shannon Stapleton, *Sophisticated shoplifting gangs are costing US retailers \$30 billion a year*, Quartz (February 8, 2017), available at: <https://qz.com/905169/sophisticated-shoplifting-gangs-are-costing-us-retailers-30-billion-a-year/>.

<sup>34</sup> National Retail Federation, *Organized Retail Crime*, available at: <https://nrf.com/advocacy/policy-agenda/organized-retail-crime> (last visited January 29, 2018).

<sup>35</sup> Id.

<sup>36</sup> Observer Staff, *Volusia County Sheriff's Office aids in the arrest of five suspects linked to retail ring theft*, Port Orange Observer (December 14, 2017), available at: <https://www.portorangeobserver.com/article/volusia-county-sheriffs-office-aids-in-the-arrests-of-five-suspects-linked-to-retail-ring-theft> (last visited January 29, 2018).

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Staff writer, *2 arrested, 2 wanted in \$222,000 Home Depot theft ring, deputies say*, Polk County News Channel 6 (December 21, 2017), available at: <https://www.clickorlando.com/news/florida/polk-county/2-arrested-2-wanted-in-222-000-home-depot-theft-ring-deputies-say> (last visited January 29, 2018).

**Section 2:** Provides an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See Fiscal Comments, infra.

#### **2. Expenditures:**

See Fiscal Comments, infra.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill may have an indeterminate impact on state government. Revising criminal offenses for organized scheme to defraud and petit theft, third or subsequent offense, may result in greater prison sentences and a need for additional prison beds.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

Not applicable.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 29, 2018, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment increased the Criminal Punishment Code offense level for petit theft, third or subsequent offense, third degree felony organized scheme to defraud, and second degree felony organized scheme to defraud. The bill increased the offense level for petit theft, third or subsequent offense, from level 1 to level 4. Third degree organized scheme to defraud was increased from level 3 to level 4 and second degree organized scheme to defraud was increased from level 5 to level 6.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.