

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 589 Theft Offenses

SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Donalds and others

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	Mawn	Hall
2) Justice Appropriations Subcommittee	9 Y, 0 N	Smith	Gusky
3) Judiciary Committee	14 Y, 2 N, As CS	Mawn	Poche

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 such use.

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

- 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/CS/HB 589 increases the minimum threshold values for the following theft and retail offenses:

- 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 enclosed 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 also provides that enhanced penalties for theft and retail theft offenses only apply if the offender has a prior adult theft or retail theft conviction and the new offense occurs within three years of the expiration of the sentence for the prior conviction.

The Criminal Justice Impact Conference considered the bill on February 27, 2019, and determined the bill would significantly reduce the need for prison beds (a decrease of more than 25 prison beds).

The bill provides an effective date of July 1, 2019.

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 theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions or the type of property stolen. The 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 ⁶ of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$300	First Degree Misdemeanor ⁷
	< \$100	Second Degree Misdemeanor ⁸

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first degree misdemeanor.⁹ Petit theft committed by a person with two or more previous theft convictions is a third degree felony.¹⁰

Florida last increased the minimum threshold amount for third degree felony grand theft in 1986.¹¹ Florida added the third degree felony grand theft provisions related to property taken from a dwelling or

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 \$10,000 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 "Unenclosed curtilage of a dwelling" means the unenclosed land or grounds, or any outbuildings, directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

⁷ 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.

⁸ 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.

⁹ S. 812.014(3)(b), F.S.

¹⁰ S. 812.014(3)(c), F.S.

¹¹ Ch. 86-161, Laws of Fla.

its unenclosed curtilage in 1996.¹² The petit theft provisions, including the threshold amounts, were last amended in 1996.¹³

Retail Theft

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

- 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.¹⁴

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

- 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 retail theft where the value of the stolen property exceeds \$3,000.¹⁵

Florida established the current threshold amounts for third degree felony retail theft in 2001.¹⁶

Prison and Probation Admissions

In fiscal year 2017-2018, the Florida Department of Corrections (DOC) admitted 1,591 inmates to prison for grand theft offenses charged under s. 812.014, F.S., and 33 inmates for retail theft offenses charged under s. 812.015, F.S.¹⁷ During the same period, DOC admitted 9,511 offenders to probation for grand theft offenses charged under s. 812.014, F.S., and 195 offenders for retail theft offenses charged under s. 812.015, F.S.¹⁸

¹² Ch. 96-388, Laws of Fla.

¹³ *Id.*

¹⁴ S. 812.015(1)(d), F.S.

¹⁵ S. 812.015(9), F.S.

¹⁶ Ch. 2001-115, Laws of Fla.

¹⁷ Email from Jared Torres, Legislative Affairs Director, Florida Department of Corrections, Fwd: Information Request (Feb. 26, 2019).

¹⁸ *Id.*

Theft Threshold Amounts in Other States

Since 2000, at least 39 states have increased the threshold dollar amounts for felony theft crimes.¹⁹ Nine states increased the threshold dollar amounts twice during this time period.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
	Texas	\$1,500	\$2,500
2016	Alaska	\$750	\$1,000
	Hawaii	\$300	\$750

¹⁹ Pew Charitable Trusts, *States Can Safely Raise Their Felony Theft Thresholds, Research Shows* (Apr. 3, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/05/22/states-can-safely-raise-their-felony-theft-thresholds-research-shows> (last visited Apr. 3, 2019).

²⁰ *Id.*

	Kansas	\$1,000	\$1,500
	Maryland	\$1,000	\$1,500
	Oklahoma	\$500	\$1,000
	Tennessee	\$500	\$1,000
2017	Massachusetts	\$250	\$1,200
2018	Virginia	\$200	\$500

The majority of states (36) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft.²¹ Twelve states have thresholds between \$500 and \$950, and two states, including Florida, have thresholds below \$500.²²

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

Opponents of raising the felony theft threshold argue that increasing the threshold will incentivize offenders to steal items of greater value.²³ An examination of 23 states that changed felony theft thresholds between 2001 and 2011 revealed:

- 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 did not correlate with the state's property crime and larceny rates.²⁴

Effect of the Proposed Changes

Property Theft

CS/CS/HB 589 increases the threshold amounts for the following theft offenses:

²¹ *Id.*

²² *Id.*

²³ Lauren Krisai, *Stuck in the 80s: Time for Reform of Florida's Felony Theft Threshold*, The Journal of the James Madison Institute (Spring 2017), https://reason.org/wp-content/uploads/files/florida_theft_threshold_stuck_in_1980s.pdf (last visited Apr. 3, 2019).

²⁴ *Id.*

Offense	Current Threshold	Proposed Threshold
Second degree petit theft	< \$100	< \$500
First degree petit theft	≥ \$100, but < \$300	≥ \$500, but < \$1,000 ²⁵
Third degree grand theft	≥ \$300, but < \$20,000	≥ \$1,000, but < \$20,000 ²⁶
Third degree grand theft of property from a dwelling or its enclosed curtilage	≥ \$100, but < \$300	≥ \$1,000, but < \$5,000 ²⁷

The bill retains the provision making a conviction for petit theft after a previous conviction for any theft a first degree misdemeanor. However, the bill provides that a person commits a third degree felony only if:

- The person commits petit theft in the first degree after two or more previous theft convictions as an adult; and
- The third or subsequent petit theft offense occurred within three years of the expiration of the person's sentence for the most recent theft conviction.

This change prohibits a court from using juvenile theft offenses to enhance a petit theft offense to a felony and limits the time frame from which a court may use prior theft convictions for sentence enhancement.

Retail Theft

The bill increases the threshold amount for third degree felony retail theft from \$300 or more to \$1,000 or more. The bill also amends s. 812.015, F.S., to enhance retail theft to a second degree felony only if:

- The offender has a previous retail theft conviction as an adult; and
- The subsequent retail theft offense occurred within three years of the expiration of the offender's most recent retail theft conviction.

This change prohibits a court from using juvenile retail theft offenses to enhance a retail theft offense to a felony and limits the time frame from which a court may use prior retail theft convictions for sentence enhancement.

Other

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, 2019.

B. SECTION DIRECTORY:

Section 1: Amending s. 812.014, F.S., relating to theft.

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

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

Section 4: Providing an effective date of July 1, 2019.

²⁵ 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 \$163.03 in 2019 dollars and \$300 in 1996 has the same buying power as \$489.08 in 2019 dollars. United States Department of Labor, Bureau of Labor Statistics, *CPI Inflation Calculator*, <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited Apr. 3, 2019).

²⁶ 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 \$688.99 in 2019 dollars. *Id.*

²⁷ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered this bill on February 27, 2019, and determined the bill would reduce the need for prison beds by a significant amount.²⁸

Per DOC, in FY 17-18 there were:

- 10,351 offenders sentenced under s. 812.014(2)(c)(1), F.S., with 1,131 of these offenders sentenced to prison;
- Zero offenders sentenced for theft of a will or theft of a stop sign;
- 15 offenders sentenced for taking property from a construction site, with one offender sentenced to prison;
- Four offenders sentenced for theft of a fire extinguisher, with no offenders sentenced to prison;
- 116 offenders sentenced under s. 812.014(2)(d), F.S., with 10 offenders sentenced to prison;
- 3,389 offenders sentenced under s. 812.014(3)(c), F.S., with 436 of these offenders sentenced to prison; and
- 301 offenders sentenced under s. 812.015(8), F.S., with 65 of these offenders sentenced to prison.²⁹

The available data cannot determine how many offenders the proposed changes would impact.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may increase local government expenditures by an indeterminate amount as it raises the threshold for felony theft offenses, which may result in more county jail sentences.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁸ A significant impact is a change of more than 25 prison beds.

²⁹ Criminal Justice Impact Conference, *HB 589 – Theft Offenses*, February 27, 2019, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB589.pdf>, (last visited Apr. 3, 2019).

³⁰ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment conformed the Criminal Punishment Code offense severity ranking chart to changes made by the bill.

On April 3, 2019, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Restores to the list of specified items, the theft of which is grand theft and a third degree felony:
 - A will, codicil, or other testamentary instrument;
 - A fire extinguisher;
 - Anything taken from a designated construction site; and
 - Any stop sign.
- Removes theft of a utility service from the list.
- Conforms the offense severity ranking chart within the Criminal Punishment Code to these changes.

This analysis is drafted to the committee substitute to the committee substitute as passed by the Judiciary Committee.