

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1511 Retail Theft

SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Clemons and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	15 Y, 3 N, As CS	Frost	Hall
2) Judiciary Committee	12 Y, 5 N	Frost	Kramer

SUMMARY ANALYSIS

In recent years, instances of organized retail theft have grown substantially, and most commonly involve activity known as “boosting.” “Boosting” is essentially organized shoplifting often involving multiple offenders operating in different roles to steal multiple items and either resell the items or return them for store credit or even cash. More often than not, the stolen items are sold via online marketplaces, which makes tracing the criminal activity back to the online seller nearly impossible.

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.

Retail theft is punishable as either a third degree felony or a second degree felony based on the circumstances surrounding the retail theft and the value of the merchandise stolen.

CS/HB 1511 creates two new retail theft crimes aimed at preventing boosting. Under the bill a person commits a third degree felony retail theft crime, ranked as a level 5 offense on the Criminal Punishment Code offense severity ranking chart (OSRC), when he or she individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period, and in committing such thefts:

- The person obtains or uses **10 or more** items of merchandise, regardless of the value of such merchandise;
- The number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen; and
- Two or more of the thefts occur at different physical merchant locations.

A person commits a second degree felony retail theft offense, ranked as a level 6 offense on the OSRC, when he or she commits the same offense outlined above, but in committing the offense, obtains or uses **20 or more** items of merchandise.

Under the bill, a third degree felony retail theft offense is enhanced to a second degree felony if the offender has a prior conviction for a second degree felony retail theft offense.

The Criminal Justice Impact Conference considered the bill on February 14, 2022, and determined the bill may have a positive indeterminate impact on the prison population by creating additional conduct considered a second or third degree felony retail theft offense.

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In recent years, instances of organized retail theft have grown substantially, and most commonly involve activity known as “boosting.” “Boosting” is essentially organized shoplifting often involving multiple offenders operating in different roles to steal multiple items and either resell the items or return them for store credit or even cash. More often than not, the stolen items are sold via online marketplaces, which makes tracing the criminal activity back to the online seller nearly impossible.¹

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; or
- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.

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 and general property types are classified as follows:

	Property Value/Type	Offense Level
Grand Theft	≥ \$100,000 or a semitrailer deployed by law enforcement officer; property stolen while causing other property damage; or cargo valued ≥ \$50,000	First Degree Felony
	≥ \$20,000, but < \$100,000 or cargo valued < \$50,000; emergency medical equipment; or law enforcement equipment from authorized emergency vehicle	Second Degree Felony
	≥ \$10,000, but < \$20,000 or specified items (such as a firearm or motor vehicle)	Third Degree Felony
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage ² of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$750	First Degree Misdemeanor
	< \$100	Second Degree Misdemeanor

Additionally, the penalty for a petit theft offense is increased if a person has one or more prior theft convictions, as follows: petit theft committed by a person with a previous theft conviction is a first

¹ See Storm Suiter, *Organized Retail Crime Methods and How to Prevent Them*, LiveView Technologies (Sep. 28, 2021), <https://www.lvt.com/company/about-us> (last visited Feb 21, 2022); Chris Trlica, *Organized Retail Crime Methods: The Booster-Fence Ecosystem*, Loss Prevention Magazine (Mar. 28, 2019), <https://losspreventionmedia.com/organized-retail-crime-methods-booster-fence-ecosystem/> (last visited Feb. 21, 2022).

² “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.

degree misdemeanor;³ and petit theft committed by a person with two or more previous theft convictions is a third degree felony.⁴

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.⁵

Retail theft is a third degree felony if the property stolen is valued at \$750 or more and the offender:

- Individually commits retail theft, or with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period to determine the value of the property stolen;
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes the stolen property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the stolen property;
- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which 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.⁶

Retail theft is a second degree felony if the offender:

- Commits a second or subsequent third degree felony retail theft offense;
- Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing retail theft in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000; or
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and the offender subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.⁷

If a person commits retail theft in more than one judicial circuit within a 30-day period, the value of the stolen property resulting from the thefts in each judicial circuit may be aggregated, and the person must be prosecuted by the Office of the Statewide Prosecutor in accordance with s. 16.56, F.S.

According to the Florida Attorney General's office (AG), many obstacles prevent "boosting" thefts from being prosecuted under existing retail theft laws, which generally require proof of the value of the stolen merchandise. Among other issues, the AG specifically indicates problems with proving value when the

³ S. 812.014(3)(b), F.S.

⁴ S. 812.014(3)(c), F.S.

⁵ S. 812.015(1)(d), F.S.

⁶ S. 812.015(8), F.S.

⁷ S. 812.015(9), F.S.

stolen items are no longer in the store or in the offender's possession, and timely obtaining clear surveillance camera footage showing the exact items stolen so that value can be proven.^{8, 9}

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹⁰ are listed in a single offense severity ranking chart (OSRC),¹¹ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{12, 13} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each current offense.^{14, 15} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.¹⁶

Effect of Proposed Changes

CS/HB 1511 creates two new retail theft offenses aimed at preventing boosting. Under the bill, a person commits a third degree felony retail theft offense, ranked as a level 5 offense on the OSRC, when he or she individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period, and in committing such thefts:

- The person obtains or uses **10 or more** items of merchandise, regardless of the value of such merchandise;
- The number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen; and
- Two or more of the thefts occur at different physical merchant locations.

A person commits a second degree felony retail theft offense, ranked as a level 6 offense on the OSRC, when he or she commits the same offense outlined above, but in committing the offense, obtains or uses **20 or more** items of merchandise.

Under the bill, a third degree felony retail theft offense is enhanced to a second degree felony if the offender has a prior conviction for a second degree felony retail theft offense. Current law only enhances a second or subsequent third degree felony retail theft offense.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends 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.

⁸ Email from Elizabeth Guzzo, Legislative Affairs Director, Office of the Attorney General, Re: HB 1511 (Jan. 18, 2022).

⁹ In response to the growing issue of organized retail theft and "boosting," Attorney General Ashley Moody announced the creation of the Florida Organized Retail Crime Exchange (FORCE) on December 2, 2021, which consists of a task force and an interactive statewide database, designed to spot trends, identify suspects and take down massive organized retail theft rings. Pat Raia, *Database aims to thwart retail theft rings before they organize here*, *Hernando Sun* (Dec. 5, 2021), <https://www.hernandosun.com/2021/12/05/database-aims-to-thwart-retail-theft-rings-before-they-organize-here/> (last visited on Feb. 21, 2022).

¹⁰ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.

¹¹ S. 921.0022, F.S.

¹² S. 921.0022(2) and (3)(e), F.S.

¹³ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third degree felony defaults to a level 1; an unlisted second degree felony defaults to a level 4; an unlisted first degree felony defaults to a level 7; an unlisted first degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

¹⁴ Ss. 921.0022 and 921.0024, F.S.

¹⁵ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(2), F.S.

¹⁶ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. *Id.*

Section 2: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3: Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on February 14, 2022, and determined the bill may have a positive indeterminate impact on the prison population by creating additional conduct considered a second or third degree felony retail theft offense.¹⁷

In recent years, the Florida Department of Corrections (DOC) admitted the following number of inmates for retail theft offenses, as they are currently defined: 40 inmates in fiscal year 2018-19; 23 inmates in fiscal year 2019-20; and 22 inmates in fiscal year 2020-21. However, it is not known how many of those offenders committed an offense which would be covered by the conduct prohibited under the bill, nor is it known how many additional offenders will commit an offense under the bill.¹⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the new retail theft offenses created under the bill reduce retail theft, especially large retail theft operations, the bill may reduce loss of inventory to retailers.

D. FISCAL COMMENTS:

None.

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.

¹⁷ Criminal Justice Impact Conference, HB 1511 – Retail Theft.

¹⁸ *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill as it:

- Did not exclude from criminal liability a person's theft of one or more food items with specified intent; and
- Made technical and formatting changes for clarity.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.