

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 Judiciary

BILL: SB 360

INTRODUCER: Senator Harrell

SUBJECT: Traveling Across County Lines to Commit a Burglary

DATE: January 7, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 360 amends s. 843.22, F.S., which provides an enhanced penalty for persons who travel across county lines with the intent to commit a burglary. This bill removes the requirement that the purpose of the travel must have been to thwart law enforcement attempts to track the items stolen in the burglary.

This bill may have a positive indeterminate prison bed impact. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2022.

II. Present Situation:

Organized theft is a growing problem across the country. Offenders who travel for the purpose of committing theft, fraud, and ID theft are often referred to as “felony lane gangs.” The term “felony lane gang” was given to the groups of thieves because they often cash stolen checks using stolen driver licenses in a bank’s drive through lane located farthest from video cameras and tellers to avoid detection.¹ Felony lane gangs originated in south Florida, and according to the FBI, these gangs often commit bank fraud after smash-and-grab theft of identity documents.² This type of crime scheme has not only occurred throughout Florida, but has become an interstate criminal organization. Recently, several members of a felony lane gang based in

¹ U.S. Immigration and Customs Enforcement, *Leader of Florida’s Million Dollar ‘Felony Lane Gang’ Sentenced to More Than 15 Years in Prison* (March 10, 2014) <https://www.ice.gov/news/releases/leader-floridas-million-dollar-felony-lane-gang-sentenced-more-15-years-prison>.

² South Florida Sun Sentinel, *Is the Felony Lane Gang at it again? Man held in ID theft heist*, Mario Ariza, September 17, 2019, available at <https://www.sun-sentinel.com/news/crime/fl-ne-felony-lane-gang-again-20190917-xnbass6zhbbvipdb4hhcw5qui-story.html> (last visited Jan. 5, 2022).

Florida were arrested and indicted in Oregon after they traveled there for the purpose of burgling vehicles and committing bank fraud and identity theft.³

Similarly, organized retail theft continues to be a problem. A crime and safety analyst for News4Jax has stated that it is difficult to track down retail theft suspects because “they’re always in motion. They’re always moving. . . . You have to have a defined suspect, basically, have them on surveillance more than once.”⁴ In 2019, Florida Department of Law Enforcement (FDLE) agents arrested three individuals who were suspected of an elaborate scheme that stole merchandise worth thousands of dollars from retailers across the southeast, the suspects printed and affixed false UPC barcodes in the place of valid barcodes in Target and Home Depot stores, completing more than 100 thefts in 23 Florida counties. Grand theft was among the charges filed against at least one of the suspects.⁵

Burglary

Section 810.02(1), F.S., provides that a person commits burglary by:

- Entering a dwelling,⁶ structure,⁷ or conveyance⁸ with the intent to commit an offense therein, unless the premises are open to the public or the person’s entry is licensed or invited; or
- Notwithstanding a licensed or invited entry, remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or

³ The Department of Justice, United States Attorney’s Office, District of Oregon, *Felony Lane Gang Member Sentenced in Bank Fraud Scheme*, May 3, 2021, available at <https://www.justice.gov/usao-or/pr/felony-lane-gang-member-sentenced-bank-fraud-scheme> (last visited Jan. 5, 2022).

⁴ News4Jax, *Theft ring stole at least \$83K in merchandise from home improvement stores*, Allyson Henning, June 20, 2019, available at [https://www.news4jax.com/news/2019/06/21/theft-ring-stole-at-least-83k-in-merchandise-from-home-improvement-stores/#:~:text=Theft%20ring%20stole%20at%20least%20\\$83K%20in%20merchandise,stores%20between%202017%20and%202019,%20police%20reports%20show](https://www.news4jax.com/news/2019/06/21/theft-ring-stole-at-least-83k-in-merchandise-from-home-improvement-stores/#:~:text=Theft%20ring%20stole%20at%20least%20$83K%20in%20merchandise,stores%20between%202017%20and%202019,%20police%20reports%20show) (last visited Jan. 5, 2022).

⁵ News4Jax, *FDLE busts multi-state organized retail theft ring*, Steve Patrick, November 25, 2019, available at <https://www.news4jax.com/news/2019/11/25/fdle-arrests-3-for-multi-state-organized-theft-ring/> (last visited Jan. 5, 2022).

⁶ Section 810.011(2), F.S., defines “dwelling,” to mean a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁷ Section 810.011(1), F.S., defines “structure,” to mean a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁸ Section 810.011(3), F.S., defines “conveyance,” to mean any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and “to enter a conveyance” includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under chapter 252 and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08 only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

- To commit or attempt to commit a forcible felony.⁹

A burglary is a felony offense classified according to the offense's specific circumstances, as follows:

- Unarmed burglary of an unoccupied structure or unoccupied conveyance (no assault or battery) is a Level 4 third degree felony.¹⁰
- Unarmed burglary of an occupied structure (no assault or battery) is a Level 6 second degree felony.¹¹
- Unarmed burglary of a dwelling, an occupied conveyance, or an authorized emergency vehicle (no assault or battery) is a Level 7 second degree felony.¹²
- Burglary is a Level 8 first degree felony punishable by a terms of years not exceeding life imprisonment if, in the course of committing the offense, the offender:
 - Makes an assault or battery upon any person;
 - Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; or
 - Enters an occupied or unoccupied dwelling or structure, and:
 - Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; or
 - Causes damage to the dwelling or structure, or to property within the dwelling or structure in excess of \$1,000.¹³

Traveling Across County Lines

In 2014, as a response to a “wave” of burglaries in Florida, the Legislature enacted laws to reclassify the crime of burglary to a higher degree when the offender traveled to commit the crime. The Sheriff of Martin County in 2013 stated that traditional law enforcement methods, “such as using local pawn shop databases . . . , confidential informants . . . proactive police patrols, . . . or targeted patrols,” become less effective with these crimes. According to the Sheriff, it is difficult for law enforcement to establish a pattern and track criminals when they travel from their home county to neighboring counties to commit crimes.¹⁴

Section 843.22, F.S., provides that if a person who commits a burglary travels any distance with the intent to commit the burglary in a county in this state other than the person's county of residence, the degree of the burglary is reclassified to the next higher degree if the purpose of the person's travel is to thwart law enforcement attempts to track the items stolen in the burglary.¹⁵

⁹ A “forcible felony” is treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. Section 776.08, F.S.

¹⁰ Sections 810.02(4)(a) and (b) and 921.0022(3)(d), F.S.

¹¹ Sections 810.02(3)(c) and 921.0022(3)(f), F.S.

¹² Sections 810.02(3)(a), (b), (d), and (e) and 921.0022(3)(g), F.S.

¹³ Sections 810.02(2)(a)2. and 921.0022(3)(h), F.S.

¹⁴ WFSU News, *Sheriff Enlists Legislative Help to Crack Down on Growing Problem: ‘Pillowcase Burglars,’* Sascha Corder, December 18, 2013, available at <https://news.wfsu.org/state-news/2013-12-18/sheriff-enlists-legislative-help-to-crack-down-on-growing-problem-pillowcase-burglars> (last visited Jan. 5, 2022).

¹⁵ Section 843.22(2), F.S.

County of residence is the county within this state that a person resides. Evidence of a person's county of residence includes, but is not limited to:

- The address on a person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which a person's motor vehicle is registered;
- The county in which a person is enrolled in an educational institution; and
- The county in which a person is employed.¹⁶

For purposes of sentencing, a burglary that is reclassified under this section is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023, F.S., for the offense committed.¹⁷

Severity Ranking Chart

Section 921.0022(1) and (2), F.S., provides the offense severity ranking chart that must be used with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998. The chart has 10 offense levels, ranked from least severe to most severe.

Section 921.0023, F.S., provides that until the Legislature specifically assigns an offense to a severity level in the offense severity ranking chart, the severity level is within the following parameters:

- A third degree felony is within offense level 1;
- A second degree felony is within offense level 4;
- A first degree felony is within offense level 7;
- A first degree punishable by life felony is within offense level 9; and
- A life felony is within offense level 10.

Reclassification

Florida currently has various statutes that reclassify criminal offenses under specified circumstances. Generally, criminal laws provide for reclassification to the next highest degree. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. These are the maximum sentences provided in statute:

- Sixty days in a county jail for a second degree misdemeanor;
- One year in a county jail for a first degree misdemeanor;
- Five years in state prison for a third degree felony;
- Fifteen years in state prison for a second degree felony; and
- Generally, 30 years in state prison for a first degree felony.¹⁸

¹⁶ Section 843.22(1)(a), F.S.

¹⁷ Section 843.22(2), F.S.

¹⁸ Section 775.082, F.S. (maximum penalties). Fines may also be imposed, and those fines escalate based on the degree of the offense. Section 775.082, F.S., provides the following maximum fines: \$500 for a second degree misdemeanor; \$1,000 for a first degree misdemeanor; \$5,000 for a third degree felony; and \$10,000 for a second degree felony and a first degree felony.

Examples of criminal offenses that provide for such reclassification include, in part:

- A violation of driving while a license is suspended is a second degree misdemeanor for a first offense.¹⁹ A second or subsequent conviction is reclassified from a second degree misdemeanor to a first degree misdemeanor.²⁰ Further, a third or subsequent conviction is reclassified to a third degree felony if the violation or the most recent prior conviction is related to a violation of specified driving offenses.²¹
- A violation of the theft statute under s. 812.014, F.S., for petit theft offenses are reclassified when a person has prior theft convictions.²² For example, a petit theft where the property is valued at \$100 or more, but less than \$750, is a first degree misdemeanor²³ but a person who commits petit theft and who previously was convicted two or more times for a theft commits a third degree felony.²⁴

III. Effect of Proposed Changes:

This bill amends s. 843.22, F.S., which provides an enhancement for persons who travel across county lines with the intent to commit a burglary. This bill removes the requirement that the purpose of the travel must have been to thwart law enforcement attempts to track the items stolen in the burglary.

This bill is effective October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁹ Section 322.34(2)(a), F.S.

²⁰ Section 322.34(2)(b), F.S.

²¹ Section 322.34(2)(c), F.S. The enumerated specified offenses include driving under the influence; refusal to submit to a urine, breath-alcohol, or blood alcohol test; a traffic offense causing death or serious bodily injury; or fleeing and eluding.

²² Sections 812.014(3)(b), and (c), F.S.

²³ Section 812.014(2)(e), F.S.

²⁴ Section 812.04(3)(c), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) has not reviewed this legislation. However, SB 360 may have a positive indeterminate prison bed impact due to the increased number of offenders who may be sentenced to prison under this enhancement. Removing the requirement to prove that purpose of the travel must have been to thwart law enforcement attempts to track the items stolen may increase the number of offenders who qualify for this enhancement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 843.22 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.