

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 531 Traveling Across County Lines to Commit Criminal Offenses

**SPONSOR(S):** Snyder

**TIED BILLS:** IDEN./SIM. BILLS: SB 538

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 2 N	Leshko	Hall
2) Justice Appropriations Subcommittee	10 Y, 4 N	Smith	Keith
3) Judiciary Committee	14 Y, 6 N	Leshko	Kramer

### SUMMARY ANALYSIS

Under s. 812.014, F.S., 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 such property. Theft offense levels are generally categorized based on the value of the property stolen. If the property is valued at:

- \$100,000 or more, the offender commits grand theft in the first degree, a first-degree felony.
- \$20,000 or more, but less than \$100,000, the offender commits grand theft in the second degree, a second-degree felony.
- \$750 or more, but less than \$20,000, the offender commits grand theft of the third degree, a third-degree felony.
- \$100 or more, but less than \$750, and is taken from a dwelling or unclosed curtilage of a dwelling, the offender commits grand theft of the third degree, a third-degree felony.

Forcible felonies, as defined in s. 776.08, F.S., include 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.

Under s. 843.22, F.S., a burglary offense may be reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart (OSRC) when the person committing the burglary travels any distance with the intent to commit the burglary in a county that is not his or her county of residence. A person who is arrested for a burglary offense that is subject to reclassification under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.

HB 531 amends s. 843.22, F.S., to reclassify the penalty for all forcible felonies and grand theft offenses when the offense is committed by an offender who travels any distance with the intent to commit the forcible felony or grand theft in a county other than his or her county of residence. The bill also specifies that a forcible felony or grand theft that is reclassified under the bill is ranked one level above the ranking normally specified in the OSRC for the offense committed. Additionally, the bill prohibits a person who is arrested for a forcible felony or grand theft offense that is subject to reclassification under s. 843.22, F.S., from being released on bail until he or she appears for a first appearance hearing and a court determines bond.

The bill may have a positive indeterminate impact on jail and prison beds by expanding the offenses eligible for reclassification under s. 843.22, F.S., which may result in more jail and prison admissions and more offenders being held in jail prior to first appearance.

The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Grand 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>1</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>2</sup>

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 <sup>3</sup>
	≥ \$20,000, but < \$100,000	Second-degree felony <sup>4</sup>
	≥ \$10,000, but < \$20,000	Third-degree felony <sup>5</sup>
	≥ \$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 <sup>6</sup> of a dwelling	Third-degree felony
Petit Theft	≥ \$100, but < \$750	First-degree misdemeanor <sup>7</sup>
	< \$100	Second-degree misdemeanor <sup>8</sup>

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.<sup>9</sup> Petit theft committed by a person with two or more previous theft convictions is a third-degree felony.<sup>10</sup>

##### Forcible Felonies

Under s. 776.08, F.S., forcible felonies include:

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

<sup>2</sup> S. 812.014(1)(b), F.S.

<sup>3</sup> A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

<sup>4</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

<sup>5</sup> A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, and 775.084, F.S.

<sup>6</sup> "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.

<sup>7</sup> A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>8</sup> A second-degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

<sup>9</sup> S. 812.014(3)(b), F.S.

<sup>10</sup> S. 812.014(3)(c), F.S.

- Treason (a first-degree felony);<sup>11</sup>
- Murder (ranges from a second-degree felony to a capital felony);<sup>12</sup>
- Manslaughter (a second or first-degree felony);<sup>13</sup>
- Sexual battery (ranges from a second-degree felony to a capital felony);<sup>14</sup>
- Carjacking (a first-degree felony);<sup>15</sup>
- Home-invasion robbery (a first-degree felony);<sup>16</sup>
- Robbery (a second or first-degree felony);<sup>17</sup>
- Burglary (ranges from a third-degree felony to a first-degree felony);<sup>18</sup>
- Arson (a second or first-degree felony);<sup>19</sup>
- Kidnapping (a first-degree or life felony);<sup>20</sup>
- Aggravated assault (a third-degree felony);<sup>21</sup>
- Aggravated battery (a second-degree felony);<sup>22</sup>
- Aggravated stalking (a third-degree felony);<sup>23</sup>
- Aircraft piracy (a first-degree felony);<sup>24</sup>
- Unlawful throwing, placing, or discharging of a destructive device or bomb (ranges from a third-degree felony to a capital felony);<sup>25</sup> and
- Any other felony which involves the use or threat of physical force or violence against any individual.<sup>26</sup>

### Traveling Across County Lines with Intent to Commit a Burglary

Under s. 843.22, F.S., a burglary offense is reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart when the offender committing the burglary travels any distance with the intent to commit the burglary in a county that is not his or her county of residence as follows:<sup>27</sup>

- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.<sup>28</sup>

A person commits burglary by:<sup>29</sup>

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the person's entry is licensed or invited; or
- 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
  - To commit or attempt to commit a forcible felony.<sup>30</sup>

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<sup>11</sup> S. 876.32, F.S.

<sup>12</sup> Ss. 782.04, 782.065, and 782.09, F.S.

<sup>13</sup> S. 782.07, F.S.

<sup>14</sup> S. 794.011, F.S.

<sup>15</sup> S. 812.133, F.S.

<sup>16</sup> S. 812.135, F.S.

<sup>17</sup> S. 812.13, F.S.

<sup>18</sup> S. 810.02, F.S.

<sup>19</sup> S. 806.01, F.S.

<sup>20</sup> S. 787.01, F.S.

<sup>21</sup> S. 784.021, F.S.

<sup>22</sup> S. 784.045, F.S.

<sup>23</sup> S. 784.048, F.S.

<sup>24</sup> S. 860.16, F.S.

<sup>25</sup> Ss. 790.161 and 790.1615, F.S.

<sup>26</sup> S. 776.08, F.S.

<sup>27</sup> S. 843.22(2), F.S.

<sup>28</sup> A capital felony cannot be reclassified. See *Miller v. State*, 438 So. 2d 83 (4th DCA 1983).

<sup>29</sup> S. 810.02, F.S.

<sup>30</sup> S. 810.02(1)(b), F.S.

While a burglary offense is always classified as a felony, the felony offense level may change according to the offense's specific circumstances.<sup>31</sup>

Under s. 843.22, F.S., a person's "county of residence" means the county in which he or she resides within Florida, and evidence of a person's county of residence may include, 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.<sup>32</sup>

A person who is arrested for a burglary offense that is subject to reclassification under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.<sup>33</sup>

The Florida Department of Law Enforcement's Computerized Criminal History (CCH) data indicates that from January 1, 2014, through August 2023, 44 arrests for a violation of s. 843.22, F.S., were made, two prosecutions were pending, and one person has been convicted for a burglary offense enhanced under s. 843.22, F.S., statewide.<sup>34, 35</sup>

### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>36</sup> are listed in a single offense severity ranking chart (OSRC),<sup>37</sup> 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.<sup>38, 39</sup> 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 offense.<sup>40, 41</sup> 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.<sup>42</sup>

### **Effect of Proposed Changes**

HB 531 amends s. 843.22, F.S., to reclassify the penalty for all forcible felonies and grand theft offenses when the offense is committed by an offender who travels any distance with the intent to commit the forcible felony or grand theft in a county other than his or her county of residence. The bill

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<sup>31</sup> S. 810.02(2)-(4), F.S.

<sup>32</sup> S. 843.22(1)(a), F.S.

<sup>33</sup> S. 903.046(2)(l), F.S.

<sup>34</sup> However, Florida Statute is an optional field in the arrest data; as such, 12.7% of arrests in the CCH data for the time period reported do not include a statutory reference. Florida Department of Law Enforcement, *CCH Data for Section 843.22, Florida Statutes* (on file with the House Criminal Justice Subcommittee).

<sup>35</sup> While an offender may be charged with a particular offense or enhancement by a law enforcement officer at the time of his or her arrest, the prosecutor has the discretion to determine which offenses or enhancements with which to formally charge a person, based on his or her assessment of the evidence and consideration of whether or not certain charges or enhancements can be proven to a jury beyond a reasonable doubt.

<sup>36</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

<sup>37</sup> S. 921.0022, F.S.

<sup>38</sup> S. 921.0022(2), F.S.

<sup>39</sup> 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.

<sup>40</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>41</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

<sup>42</sup> 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 non-prison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

also specifies that a forcible felony or grand theft that is reclassified under the bill is ranked one level above the ranking normally specified in the OSRC for the offense committed.

The bill also prohibits a person who is arrested for a forcible felony or grand theft offense that is subject to reclassification under s. 843.22, F.S., from being released on bail until he or she appears for a first appearance hearing and a court determines bond.

The bill provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 843.22, F.S., relating to traveling across county lines with intent to commit a burglary.

**Section 2:** Provides an effective date of upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The bill may have a positive indeterminate impact on jail and prison beds by expanding the offenses eligible for reclassification when an offender travels across county lines with intent to commit one of the specified offenses, which may result in more jail and prison admissions and more offenders being held in jail prior to first appearance.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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