

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 Criminal Justice

BILL: SB 538

INTRODUCER: Senator Harrell

SUBJECT: Traveling Across County Lines to Commit Criminal Offenses

DATE: January 9, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Wyant | Stokes | CJ | Pre-meeting |
| 2. | | | ACJ | |
| 3. | | | FP | |

I. Summary:

SB 538 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 replaces the crime of burglary with the crime of grand theft or a forcible felony as defined in s. 776.08, F.S.

Specifically, the bill reclassifies the degree of a criminal offense to the next highest level if a person travels any distance to commit a grand theft or forcible felony in a county other than the person's county of residence. An offense that is reclassified under this section is ranked one level above the ranking specified in the offense severity ranking chart.

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

This bill is effective upon becoming a law.

II. Present Situation:

Organized theft is a growing problem across the country. Offenders who travel for the purpose of theft, fraud, and related charges are often referred to as "felony lane gangs" or "traveling criminals." 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.¹ Earlier this year a retail-theft crime ring faced charges for stealing merchandise worth more than \$1.4 million from Home Depot stores.² These thefts took place at Home Depot stores in 15 counties across the

¹ 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 December 15, 2023).

² Florida Office of the Attorney General, *News Release, Another retail theft ring shut down by Attorney General Moody's Florida Organized Retail Crime Exchange Taskforce*, August 7, 2023, available at:

state, beginning in Indian River County. The Indian River County Sheriff stated, “We have so many traveling criminals coming to our area. There’s still the small-time crime that happens – people breaking into cars, things like that – but the bigger crimes; the boat motor thefts, the catalytic converter thefts, the larger burglaries, all of those are being done by criminals from other areas.”³

Burglary

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

- Entering a dwelling,⁴ structure,⁵ or conveyance⁶ 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
 - To commit or attempt to commit a forcible felony.

Traveling to commit a Burglary

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 other than the person’s county of residence, the degree of the burglary is reclassified to the next higher degree.

“County of residence” means the county within the state in which 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;

<https://www.myfloridalegal.com/newsrelease/another-retail-theft-ring-shut-down-attorney-general-moodys-florida-organized-retail> (last accessed December 18, 2023).

³ See CBS12 News, *Leader of retail theft ring targeting Home Depot stores in 15 Florida Counties sentenced to 8 years behind bars*, Dylan Huberman, November 15, 2023, available at: <https://cbs12.com/news/local/leader-of-retail-theft-ring-targeting-home-depot-stores-in-15-florida-counties-sentenced-to-8-years-behind-bars> (Last accessed December 18, 2023).

⁴ 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 ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

⁵ 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 ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. 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.

⁶ 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 ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S. 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.

- 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.⁷

For the 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.⁸

Reclassification and Ranking

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:

- 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.⁹

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.

Grand Theft

Section 812.014, F.S., provides that a person commits a theft if he or she knowingly obtains or uses, or endeavors to obtain or to 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

⁷ Section 843.22 (1) (a) (1-6), F.S.

⁸ Section 843.22 (2), F.S.

⁹ Section 775.082, F.S. Fines may also be imposed, and those fines escalate based on the degree of the offense.

Section 775.083, 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.

- Appropriate the property to his or her own use or to the use of any person not entitled to use the property.¹⁰

Generally, a person commits a third degree felony¹¹ crime of grand theft if the property stolen is valued at \$750 or more, but less than \$20,000.¹² If the property stolen is \$20,000 or more, but less than \$100,000, the offender commits a second degree felony,¹³ and if the property stolen is \$100,000 or more, the offender commits a first degree felony.¹⁴ Other items listed under this section such as the theft of a firearm, a motor vehicle, or a stop sign, may also constitute grand theft.¹⁵

Forcible Felony

Section 776.08, F.S., defines a “forcible felony” as:

- 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.

III. Effect of Proposed Changes:

The bill 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 replaces the crime of burglary with the crime of grand theft or a forcible felony.

Specifically, the bill reclassifies the degree of a criminal offense to the next highest level if a person travels any distance to commit a grand theft or forcible felony in a county other than the

¹⁰ Section 812.014(1), F.S.

¹¹ A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

¹² Section 812.014(2)(c)1.-3., F.S.

¹³ Section 812.014(2)(b), F.S.

¹⁴ Section 812.014(2)(a)1., F.S.

¹⁵ Section 812.014(2)(c), F.S.

person's county of residence. An offense that is reclassified under this section is ranked one level above the ranking specified in the offense severity ranking chart.

The bill removes the definition for burglary as it would be encompassed under forcible felony as defined in s. 776.08, F.S.

This bill is effective upon becoming a law.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a positive indeterminate prison bed impact due to expanding the crimes eligible for enhancements which may lead to an increased number of offenders receiving enhanced sentences.

According to a preliminary estimate by the Office of Economic and Demographic Research (EDR), FDLE reported 121 arrests since 2022 where the offenses were elevated for traveling any distance with the intent to commit a burglary in a county in this state

other than the person's county of residence, with one convicted charge under this section. In the fiscal year of 2022-23, DOC reported 1,090 new commitments to prison for grand theft offenses and 8,759 new commitments for forcible felonies. While it is unknown how many offenders would be impacted by this change, EDR estimated this bill to have a positive indeterminate impact.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁶ Office of Economic and Demographic Research, *SB 538- Traveling Across County Lines to Commit Criminal Offenses (identical HB 531)*(on file with the Senate Committee on Criminal Justice).