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# **Criminal Justice Subcommittee**

**Wednesday, January 10, 2018**

**3:30 PM – 5:00 PM**

**404 HOB**

**Meeting Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Wednesday, January 10, 2018 03:30 pm  
**End Date and Time:** Wednesday, January 10, 2018 05:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 1.50 hrs

**Consideration of the following bill(s):**

HB 365 Standards for Correctional Officers by Gonzalez  
HB 591 Missing Persons With Special Needs by Porter  
HB 713 Theft Offenses by Donalds, Alexander  
HB 733 Contraband in County Detention Facilities by Sullivan

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 9, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 9, 2018.

**NOTICE FINALIZED on 01/08/2018 4:09PM by Kim.Breanna**





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 365 Standards for Correctional Officers

**SPONSOR(S):** Gonzalez

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno 	Sumner 
2) Judiciary Committee			

### SUMMARY ANALYSIS

Correctional officers in Florida are appointed or employed full time by the state or any political subdivision, or by any private entity which has contracted with the state or county, and are tasked with the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution. Section 943.13, F.S., lays out the minimum qualifications for correctional officers, as well as law enforcement officers and correctional probation officers. These minimum qualifications include a requirement that officers be at least nineteen years old.

HB 365 decreases the minimum age requirement for a full-time, part-time, or auxiliary correctional officer to eighteen years old. The minimum age requirement for all law enforcement and correctional probation officers remains nineteen years old. Decreasing the minimum age requirement expands the pool of eligible persons from which the Department of Corrections may recruit to fill its personnel needs.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Correctional officers in Florida are appointed or employed full time by the state or any political subdivision, or by any private entity which has contracted with the state or county, and are tasked with the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution.<sup>1</sup> Section 943.13, F.S., lays out the minimum qualifications for correctional officers, as well as law enforcement officers and correctional probation officers. These minimum qualifications include a requirement that officers be at least nineteen years old.<sup>2</sup>

The Florida Department of Corrections (FDC) has experienced growing staffing shortages over the past several years.<sup>3</sup> From 2006 to 2015, the number of correctional officers relative to the average daily inmate population significantly decreased.<sup>4</sup> In June 2006, FDC reported 12,099 filled correctional officer positions and 554 vacancies; in June 2015, FDC reported 10,973 filled correctional officer positions and 720 vacancies.<sup>5</sup> The inmate population grew over the same time period from 88,576 on June 30, 2006,<sup>6</sup> to 100,050 on June 30, 2015.<sup>7</sup> Thus, by June 2015, both the total number of correctional officers and the ratio of correctional officers to inmates had decreased. From the end of 2016 to October 2017, the number of correctional officer vacancies increased by 103%.<sup>8</sup>

A study by the Association of State Correctional Administrators (ASCA)<sup>9</sup> recommended lowering the applicant eligibility age from nineteen to eighteen so that FDC could recruit high school seniors and address some of the staffing shortages facing the department.<sup>10</sup> Eighteen year olds in Florida are currently eligible to begin employment in comparable career paths. For example, a person may join the military at seventeen with parental consent or eighteen without parental consent,<sup>11</sup> and the minimum age qualification for firefighters is eighteen years old.<sup>12</sup> Additionally, several other states allow eighteen year olds to be correctional officers, including Georgia,<sup>13</sup> Texas,<sup>14</sup> and Kansas.<sup>15</sup>

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<sup>1</sup> S. 943.10(2), F.S.

<sup>2</sup> S. 943.13(1), F.S.

<sup>3</sup> CGL Management Group, *Study of Operations of the Florida Department of Corrections*, at 10, (November 2015) (on file with Criminal Justice Subcommittee staff).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Florida Department of Corrections, *2005-2006 Annual Report: Inmate Population*, at 38, available at: [http://www.dc.state.fl.us/pub/annual/0506/stats/im\\_pop.html](http://www.dc.state.fl.us/pub/annual/0506/stats/im_pop.html) (last visited January 4, 2018).

<sup>7</sup> Florida Department of Corrections, *2014-2015 Annual Report: Inmate Population*, available at: [http://www.dc.state.fl.us/pub/annual/1415/stats/im\\_pop.html](http://www.dc.state.fl.us/pub/annual/1415/stats/im_pop.html) (last visited January 4, 2018).

<sup>8</sup> Florida Department of Corrections, *Department Institutional Vacancy Reports*, (December 1, 2018) (on file with Criminal Justice Subcommittee staff).

<sup>9</sup> FDC contracted ASCA to conduct an independent staffing audit and analysis pursuant to Executive Order 15-134, available at: <https://www.flgov.com/wp-content/uploads/2015/07/DOC-EO.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> 10 USC § 505(a).

<sup>12</sup> S. 633.412(1), F.S.

<sup>13</sup> Georgia Department of Corrections, *How to Become a GDC Correctional Officer*, available at: <http://www.gdcjobs.com/pdf/CorrectionalOfficerBrochure.pdf> (last visited January 4, 2018).

<sup>14</sup> Texas Department of Criminal Justice, *Correctional Officer Eligibility Criteria*, available at: <https://www.tdcj.state.tx.us/divisions/hr/coinfo/emp-co.html>

<sup>15</sup> Kansas Department of Corrections, *Corrections Officers Qualifications*, available at: <https://www.doc.ks.gov/employment/corrections-officer> (last visited January 4, 2018).

## Effect of Proposed Changes

HB 365 decreases the minimum age requirement for a full-time, part-time, or auxiliary correctional officer to eighteen years old. The minimum age requirement for all law enforcement and correctional probation officers remains nineteen years old. Decreasing the minimum age requirement expands the pool of eligible persons from which the Department of Corrections may recruit to fill its personnel needs.

The bill provides an effective date of July 1, 2018.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 943.13, relating to officers' minimum qualifications for employment or appointment.

**Section 2:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to standards for correctional  
 3           officers; amending s. 943.13, F.S.; reducing the  
 4           minimum age for employment as a correctional officer  
 5           from 19 years of age to 18 years of age; providing an  
 6           effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Subsection (1) of section 943.13, Florida  
 11           Statutes, is amended to read:

12           943.13 Officers' minimum qualifications for employment or  
 13           appointment.—On or after October 1, 1984, any person employed or  
 14           appointed as a full-time, part-time, or auxiliary law  
 15           enforcement officer or correctional officer; on or after October  
 16           1, 1986, any person employed as a full-time, part-time, or  
 17           auxiliary correctional probation officer; and on or after  
 18           October 1, 1986, any person employed as a full-time, part-time,  
 19           or auxiliary correctional officer by a private entity under  
 20           contract to the Department of Corrections, to a county  
 21           commission, or to the Department of Management Services shall:

22           (1) Be at least 19 years of age, except that any person  
 23           employed as a full-time, part-time, or auxiliary correctional  
 24           officer shall be at least 18 years of age.

25           Section 2. This act shall take effect July 1, 2018.





Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Gonzalez offered the following:

**Amendment (with title amendment)**

6 Remove line 25 and insert:

7 Section 2. Section 944.145, Florida Statutes, is created  
8 to read:

9 944.145 Correctional officers under the age of 19.-A  
10 correctional officer who is under the age of 19 years shall not  
11 supervise inmates, but may perform all of the other duties  
12 performed by a full-time, part-time, or auxiliary correctional  
13 officer.

14 Section 3. This act shall take effect July 1, 2018.

15 -----  
16 -----



Amendment No.


**T I T L E   A M E N D M E N T**

17  
18       Remove line 5 and insert:  
19 from 19 years of age to 18 years of age; creating s. 944.145;  
20 prohibiting a correctional officer who is under 19 years of age  
21 from supervising inmates; permitting an officer who is under 19  
22 years of age to perform all other tasks performed by a full-  
23 time, part-time, or auxiliary correctional officer; providing an  
24 effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 591 Missing Persons With Special Needs  
**SPONSOR(S):** Porter  
**TIED BILLS:** None **IDEN./SIM. BILLS:** 1156

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		MM MacNamara	Sumner 
2) PreK-12 Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Elopement, also referred to as wandering, is a safety issue that affects some individuals with disabilities, their families, and the community. Wandering occurs when a person leaves a safe area or a responsible caregiver. It is prevalent among individuals with certain special needs and may expose them to dangerous situations. Anti-wandering and global-positioning systems can be worn or attached to an individual and are specially designed to aid in search-and-rescue efforts for individuals with special needs who are prone to wandering.

In 2016, the Legislature created three "Project Leo" pilot projects at the Center for Autism and Related Disabilities at the University of Florida, University of South Florida, and Florida Atlantic University. Each pilot project provides personal devices to aid in search-and-rescue efforts for persons with special needs in cases of elopement. Furthermore, each project is required to submit a report and recommendations annually to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The pilot projects expire on June 30, 2018.

HB 591 expands Project Leo statewide and permits any Center for Autism and Related Disabilities at any institution in the state university system to participate in a program providing personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement. The bill makes the University of Florida responsible for developing criteria for the selection of participants in the project and removes the requirement that Florida Atlantic University and University of South Florida develop similar criteria.

The bill also removes the requirement that each participating center submit a preliminary and final report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Lastly, the bill extends the project to June 30, 2019.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Elopement and Personal Devices

Elopement, also referred to as wandering, is prevalent among individuals with certain special needs and may expose them to dangerous situations. Elopement occurs when an individual leaves a safe area or responsible caregiver. Elopement is a concern particularly with children and adults who have autism and seniors who have Alzheimer's disease.<sup>1</sup> Approximately half of children with autism have a tendency to elope at least once after the age of four.<sup>2</sup> Families report that about a quarter of the children who have a tendency to elope have gone missing long enough to cause serious concern.<sup>3</sup> A substantial portion of those children who wander are at risk of bodily harm; 24% were in danger of drowning and 65% were in danger of a traffic injury.<sup>4</sup>

Anti-wandering and global-positioning system (GPS) can be used to track persons with special needs in the event they wander away from a safe area or a responsible caregiver. These tracking devices can be worn as a bracelet, attached to an individual's shoe or belt loop, or sewn into clothing. If an individual goes missing, a caregiver can pinpoint the wearer's location. There are a number of anti-wandering and GPS tracking devices which are specially designed to aid in search-and-rescue efforts for individuals with special needs who are prone to wandering. Two examples are the Protect and Locate (PAL) tracking system through Project Lifesaver and the Amber Alert GPS.

The PAL is a tracking device that is worn as a watch by the individual at risk of wandering and has a companion portable receiver that notifies the caregiver of a wandering event. Through the use of cell ID location and GPS technologies, it provides the location of a wearer accurate to nine feet. If an individual wearing a PAL device wanders outside of a set perimeter, the caregiver receives an alert, and email and text alerts with the date and location of the wandering event.<sup>5</sup> The PAL tracking system costs \$549 per unit and requires a monitoring/service plan of \$29.95 per month.

The Amber Alert GPS is a small disk that can be put in an individual's purse or backpack or, with the purchase of an accessory, can be attached to the individual. The Amber Alert GPS syncs with an online tracking portal and mobile application for iPhone, Blackberry, and Droid cellular phones to provide the real-time location of the wearer. The Amber Alert GPS costs \$135, has a one-time activation fee of \$20, and requires a \$15 per month service plan.<sup>6</sup>

##### The Center for Autism and Related Disabilities

Centers for Autism and Related Disabilities (CARD) work with families, caregivers, and professionals to optimize the potential of individuals who have autism and related disabilities. CARD serves children and adults of all levels of intellectual functioning who have autism, autistic-like disabilities, pervasive developmental disorder, dual sensory impairments (deaf-blindness), or a vision or hearing loss with another disabling condition. CARD centers provide individualized assistance, technical assistance to

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<sup>1</sup> *Autism & Wandering*, AWAARE COLLABORATION, <http://awaare.nationalautismassociation.org/autism-wandering/> (last visited January 5, 2018).

<sup>2</sup> Connie Anderson, et al., *Occurrence and Family Impact of Elopement in Children With Autism Spectrum Disorders*, PEDIATRICS, (October 8, 2012), available at <http://pediatrics.aappublications.org/content/early/2012/10/02/peds.2012-0762.full.pdf+html> (last visited January 5, 2018).

<sup>3</sup> *Id.*

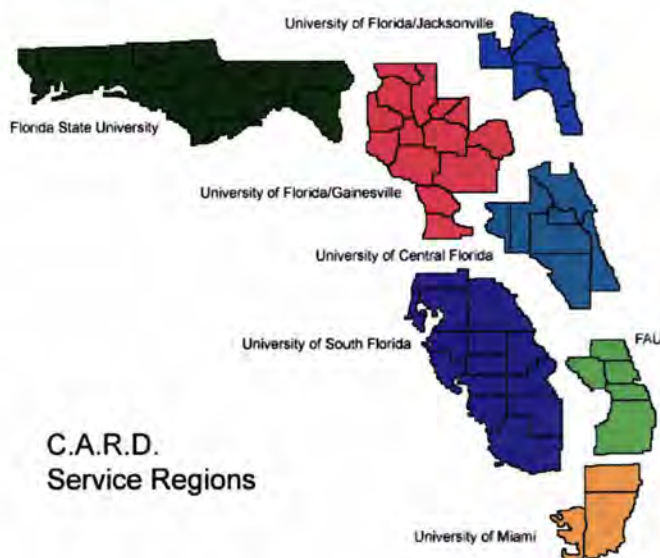
<sup>4</sup> *Id.*

<sup>5</sup> *About PAL*, Project Lifesaver, <http://www.projectlifesaver.org/Pal-info/about-pal/> (last visited January 5, 2018).

<sup>6</sup> *Amber Alert GPS*, <https://amberalertgps.com/> (last visited January 5, 2018).

schools and school districts, and assist individuals seeking a diagnosis with finding qualified professionals.<sup>7</sup>

Currently, there are seven non-residential CARD centers across the state: Florida State University, University of Florida-Jacksonville, University of Florida-Gainesville, University of Central Florida, University of South Florida, Florida Atlantic University, and University of Miami.<sup>8</sup> Together, these seven CARD centers serve every county in the state.<sup>9</sup>



### Project Leo

In 2016, the Legislature created three “Project Leo” pilot projects. Each pilot project provides personal devices to aid in search-and-rescue efforts for persons with special needs in cases of elopement.<sup>10</sup> The first pilot project was developed by the CARD at the University of Florida (UF) and serves Alachua, Baker, Columbia, Hamilton, and Suwannee Counties. The second pilot project was developed by the CARD at Florida Atlantic University (FAU) and serves Palm Beach County. The third pilot project was developed by the CARD at the University of South Florida (USF) and serves Hillsborough County.<sup>11</sup>

Participants are selected based on criteria developed by CARD UF, CARD FAU, or CARD USF. Each center’s criteria is required to, at a minimum, consider the individual’s risk of elopement. For instance, both CARD UF and CARD USF require that the individual:

- Resides in a county served by the university’s CARD;
- Has documentation of a diagnosis of autism spectrum disorder or a related disability;
- Has wandered or is at risk of wandering; and
- Is under constant supervision and monitoring of a responsible adult, who can prevent wandering and can contact 911 in the event the individual is missing.<sup>12</sup>

The number of participants is determined based on available funding within each center’s existing resources, and participation in the project is voluntary and free of charge.<sup>13</sup> Participants are provided

<sup>7</sup> University of Florida, Center for Autism and Related Disabilities, [www.card.ufl.edu/about-card/faq/](http://www.card.ufl.edu/about-card/faq/) (last visited January 5, 2018).

<sup>8</sup> Each of these universities is a “state university system” as defined under s. 1000.21(6), F.S., with the exception of the University of Miami.

<sup>9</sup> Find Your Card, <http://card.ufl.edu/about-card/find-your-card/> (last visited January 5, 2018).

<sup>10</sup> S. 937.041(1), F.S.

<sup>11</sup> Ch. 2016-186, L.O.F.

<sup>12</sup> University of Florida, Project Leo FAQs, <http://card.ufl.edu/project-leo-faqs/> (last visited January 5, 2018), and University of South Florida, Project Leo brochure, [http://cfs.cbcs.usf.edu/docs/news/CARD\\_SafetyNet\\_Brochure.pdf](http://cfs.cbcs.usf.edu/docs/news/CARD_SafetyNet_Brochure.pdf) (last visited January 5, 2018).

<sup>13</sup> S. 937.041(2), F.S.

with a personal device to aid in search-and-rescue efforts which is attachable to clothing or otherwise wearable. The respective county sheriff's offices distribute the devices to the project participants. CARD UF, CARD FAU, and CARD USF are tasked with funding any cost associated with the monitoring of the devices.<sup>14</sup>

Project Leo further requires CARD UF, CARD FAU, and CARD USF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Both reports are required to include:

- The criteria used to select the participants;
- The number of participants;
- The nature of the participants' special needs;
- The number of participants who elope;
- The amount of time taken to rescue a participant following elopement; and
- The outcome of any rescue attempts.

Additionally, the final report must include recommendations for modifications or continued implementation of the program.<sup>15</sup>

Each of the three CARDS received \$100,000 when the project was implemented in 2016.<sup>16</sup> The projects continued operation is subject to available funding within the existing resources of CARD UF, CARD FAU, and CARD USF. The project expires on June 30, 2018.<sup>17</sup>

### **Effect of Proposed Changes**

HB 591 expands Project Leo statewide and provides that any CARD at an institution in the state university system may participate in a program providing personal devices to aid search-and-rescue efforts for persons with special needs in the case of elopement. The bill makes the University of Florida responsible for developing criteria for the selection of participants in the project and removes the requirement that Florida Atlantic University and University of South Florida develop similar criteria.

The bill also removes the requirement that each CARD participating in the project submit a preliminary and final report to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Lastly, the bill extends the project to June 30, 2019.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amending s. 937.041, F.S., related to missing persons with special needs pilot projects.

**Section 2:** Providing an effective date of July 1, 2018.

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

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None

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<sup>14</sup> S. 937.041(3), F.S.

<sup>15</sup> S. 937.041(4), F.S.

<sup>16</sup> Ch. 2016-186, L.O.F.

<sup>17</sup> S. 937.041(5)-(6), F.S.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**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.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

- The term "state university system" is not defined in the bill, or specifically defined elsewhere under current law. The closest definition is contained in s. 1002.21(6), F.S., defining "state university." As University of Miami is a private institution, it would appear they would not be able to participate in Project Leo, despite the university providing CARD services to Broward, Miami-Dade, and Monroe counties.

- The bill will effectively take the project statewide and out of a testing/pilot phase. As such, the term "pilot project" may not be the best terminology for the bill.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



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A bill to be entitled  
An act relating to missing persons with special needs;  
amending s. 937.041, F.S.; expanding pilot projects  
for missing persons with special needs to all centers  
for autism and related disabilities at institutions in  
the state university system; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 937.041, Florida Statutes, is amended  
to read:

937.041 Missing persons with special needs pilot  
projects.-

(1) ~~(a)~~ There is created a statewide pilot project ~~in~~  
~~Alachua, Baker, Columbia, Hamilton, and Suwannee Counties,~~ to be  
known as "Project Leo," to provide personal devices to aid  
search-and-rescue efforts for persons with special needs in the  
case of elopement through the centers for autism and related  
disabilities at institutions in the state university system.

~~(b) There is created an additional pilot project in Palm  
Beach County to provide personal devices to aid search and  
rescue efforts for persons with special needs in the case of  
elopement.~~

~~(c) There is created an additional pilot project in~~

26 ~~Hillsborough County to provide personal devices to aid search-~~  
 27 ~~and rescue efforts for persons with special needs in the case of~~  
 28 ~~elopement.~~

29 (2) ~~(a)~~1. Participants for the pilot project ~~specified in~~  
 30 ~~paragraph (1) (a)~~ shall be selected based on criteria developed  
 31 by the Center for Autism and Related Disabilities at the  
 32 University of Florida.

33 ~~2. Participants for the pilot project specified in~~  
 34 ~~paragraph (1) (b) shall be selected based on criteria developed~~  
 35 ~~by the Center for Autism and Related Disabilities at Florida~~  
 36 ~~Atlantic University.~~

37 ~~3. Participants for the pilot project specified in~~  
 38 ~~paragraph (1) (c) shall be selected based on criteria developed~~  
 39 ~~by the Center for Autism and Related Disabilities at the~~  
 40 ~~University of South Florida.~~

41 ~~(b)~~ Criteria for participation in the pilot project  
 42 ~~projects~~ must include, at a minimum, the person's risk of  
 43 elopement. The qualifying participants shall be selected on a  
 44 first-come, first-served basis by the respective centers to the  
 45 extent of available funding within their existing resources. The  
 46 ~~Each~~ project must be voluntary and free of charge to  
 47 participants.

48 (3) Under the ~~each~~ pilot project, personal devices to aid  
 49 search-and-rescue efforts which are attachable to clothing or  
 50 otherwise worn shall be provided by the respective center to the

51 sheriff's offices of the participating counties. The devices  
 52 shall be distributed to project participants by the county  
 53 sheriff's offices in conjunction with the respective center. The  
 54 respective center shall fund any costs associated with  
 55 monitoring the devices.

56 ~~(4) Each center shall submit a preliminary report by~~  
 57 ~~December 1, 2016, and a final report by December 15, 2017, to~~  
 58 ~~the Governor, the President of the Senate, and the Speaker of~~  
 59 ~~the House of Representatives describing the implementation and~~  
 60 ~~operation of its pilot project. At a minimum, each report must~~  
 61 ~~include the criteria used to select participants, the number of~~  
 62 ~~participants, the nature of the participants' special needs, the~~  
 63 ~~number of participants who elope, the amount of time taken to~~  
 64 ~~rescue such participants following elopement, and the outcome of~~  
 65 ~~any rescue attempts. Each final report shall also provide~~  
 66 ~~recommendations for modification or continued implementation of~~  
 67 ~~the project.~~

68 (4) ~~(5)~~ The ~~Each~~ project shall operate to the extent of  
 69 available funding within the respective center's existing  
 70 resources.

71 (5) ~~(6)~~ This section expires June 30, 2019 ~~2018~~.

72 Section 2. This act shall take effect July 1, 2018.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Porter offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 937.041, Florida Statutes, is amended  
8 to read:

9 937.041 Missing persons with special needs pilot  
10 projects.-

11 (1)~~(a)~~ There is created a statewide pilot project in  
12 ~~Alachua, Baker, Columbia, Hamilton, and Suwannee Counties,~~ to be  
13 known as "Project Leo," to provide personal devices to aid  
14 search-and-rescue efforts for persons with special needs in the  
15 case of elopement through a center for autism and related  
16 disabilities at any state university listed under s. 1000.21(6).

Amendment No.

17 ~~(b) There is created an additional pilot project in Palm~~  
18 ~~Beach County to provide personal devices to aid search and~~  
19 ~~rescue efforts for persons with special needs in the case of~~  
20 ~~elopement.~~

21 ~~(c) There is created an additional pilot project in~~  
22 ~~Hillsborough County to provide personal devices to aid search~~  
23 ~~and rescue efforts for persons with special needs in the case of~~  
24 ~~elopement.~~

25 (2) ~~(a) 1.~~ Participants for the pilot project specified in  
26 ~~paragraph (1) (a)~~ shall be selected based on criteria developed  
27 by the Center for Autism and Related Disabilities at the  
28 University of Florida.

29 ~~2.~~ Participants for the pilot project specified in  
30 ~~paragraph (1) (b)~~ shall be selected based on criteria developed  
31 ~~by the Center for Autism and Related Disabilities at Florida~~  
32 ~~Atlantic University.~~

33 ~~3.~~ Participants for the pilot project specified in  
34 ~~paragraph (1) (c)~~ shall be selected based on criteria developed  
35 ~~by the Center for Autism and Related Disabilities at the~~  
36 ~~University of South Florida.~~

37 ~~(b)~~ Criteria for participation in the project pilot  
38 ~~projects~~ must include, at a minimum, the person's risk of  
39 elopement. The qualifying participants shall be selected on a  
40 first-come, first-served basis by the respective centers to the  
41 extent of available funding within their existing resources. The

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42 ~~Each~~ project must be voluntary and free of charge to  
43 participants.

44 (3) Under the ~~each pilot~~ project, personal devices to aid  
45 search-and-rescue efforts which are attachable to clothing or  
46 otherwise worn shall be provided by the respective center to the  
47 sheriff's offices of the participating counties. The devices  
48 shall be distributed to project participants by the county  
49 sheriff's offices in conjunction with the respective center. The  
50 respective center shall fund any costs associated with  
51 monitoring the devices.

52 ~~(4) Each center shall submit a preliminary report by~~  
53 ~~December 1, 2016, and a final report by December 15, 2017, to~~  
54 ~~the Governor, the President of the Senate, and the Speaker of~~  
55 ~~the House of Representatives describing the implementation and~~  
56 ~~operation of its pilot project. At a minimum, each report must~~  
57 ~~include the criteria used to select participants, the number of~~  
58 ~~participants, the nature of the participants' special needs, the~~  
59 ~~number of participants who elope, the amount of time taken to~~  
60 ~~rescue such participants following elopement, and the outcome of~~  
61 ~~any rescue attempts. Each final report shall also provide~~  
62 ~~recommendations for modification or continued implementation of~~  
63 ~~the project.~~

64 (4)~~(5)~~ The ~~Each~~ project shall operate to the extent of  
65 available funding within the respective center's existing  
66 resources.

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67        ~~(5)~~(6) This section expires June 30, 2019 ~~2018~~.  
68        Section 2. This act shall take effect July 1, 2018  
69

70        -----

71                                    **T I T L E   A M E N D M E N T**



72        Remove everything before the enacting clause and insert:  
73        An act relating to missing persons with special needs; amending  
74        s. 937.041, F.S.; expanding a project for missing persons with  
75        special needs to all centers for autism and related disabilities  
76        at any state university; providing an effective date.  
77  
78





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 713 Theft Offenses  
**SPONSOR(S):** Donalds  
**TIED BILLS:** IDEN./SIM. BILLS: SB 928

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Painter 	Sumner 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### 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 the use of the property.

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

- The taking possession of or carrying away of merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Thefts are categorized as misdemeanors or felonies under s. 812.014, F.S. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the offender, the offender's history of theft convictions or, in some cases, the type of property taken. Retail theft is punishable as a third degree felony under s. 812.015, F.S., if the property value is over \$300, but can be enhanced to a second degree felony if the offender has a prior retail theft conviction.

HB 713 amends s. 812.014, F.S. and s. 812.015, F.S., by increasing the minimum threshold values for the following property theft crimes:

- Petit theft is increased from \$100 or more to \$500 or more;
- First degree petit theft is increased from \$100 or more, but less than \$300, to \$500 or more, but less than \$1,500;
- Third degree grand theft is increased from \$300 or more to \$1,500 or more;
- Third degree grand theft from a dwelling or its unenclosed curtilage is increased from \$100 or more, but less than \$300, to \$1,500 or more, but less than \$5,000; and
- Third degree felony retail theft is increased from \$300 or more to \$1,500 or more.

The bill also deletes several items from the list of property which, if stolen, is third degree grand theft and is punishable as a third degree felony. Finally, the bill amends the enhancement of the theft and retail theft statutes.

The Criminal Justice Impact Conference (CJIC) considered a similar bill, SB 928, on January 8, 2018, and determined that the bill will reduce the need for prison beds by more than 25 beds.

The bill provides an effective date of July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0713.CRJ.DOCX

DATE: 1/8/2018

**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 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 and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the offender, the offender's history of theft convictions or, in some cases, the type of property taken. Offense levels for theft crimes based on property value thresholds are classified as follows:

	<b>Property Value</b>	<b>Offense Level</b>
<b>Grand Theft</b>	≥ \$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
	≥ \$300, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$300 if taken from a dwelling or unenclosed curtilage of a dwelling	Third Degree Felony
<b>Petit Theft</b>	≥ \$100, but < \$300	First Degree Misdemeanor <sup>6</sup>
	< \$100	Second Degree Misdemeanor <sup>7</sup>

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior convictions. Specifically:

- A person who has previously been convicted of any theft, who commits petit theft, commits a first degree misdemeanor.<sup>8</sup>
- A person who has been previously convicted of theft two or more times, who commits a petit theft, commits a third degree felony.<sup>9</sup>

<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 \$100,000 fine. SS. 775.082(3)(b)1 and 775.083(1)(b), 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(3)(d) and 775.083(1)(b), 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(3)(e) and 775.083(1)(c), F.S.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> S. 812.014(3)(b), F.S.

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

Florida last increased the minimum threshold property value for third degree grand theft in 1986.<sup>10</sup> The third degree grand theft provisions related to property taken from a dwelling or its unenclosed curtilage were added in 1996.<sup>11</sup> The petit theft provisions were amended, including the thresholds, in 1996.<sup>12</sup>

### Retail Theft

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

- The taking possession of or carrying away of merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.<sup>13</sup>

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

- 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 the offense of retail theft where the stolen property has a value in excess of \$3,000.<sup>14</sup>

The thresholds for third degree felony retail theft were created in 2001.<sup>15</sup>

### Inmate and Probation Population in Florida for Theft Crimes

There are approximately 7,000 people in Florida prisons for theft crime.<sup>16</sup> Of these 7,000 inmates:

- 603 are incarcerated for petit theft enhanced due to two or more prior theft convictions;
- 53 are incarcerated for retail theft of \$300 or more; and
- 1,136 are incarcerated for grand theft of \$300 or more but less than \$5,000.<sup>17</sup>

There are approximately 47,000 people on probation with the Florida Department of Corrections for theft crime.<sup>18</sup> Out of those 47,000 individuals:

- 1,393 are on probation for petit thefts enhanced due to prior theft convictions;

<sup>10</sup> Ch. 86-161, s. 1, L.O.F.

<sup>11</sup> Ch. 96-388, s. 49, L.O.F.

<sup>12</sup> Ch. 96-388, s. 49, L.O.F.

<sup>13</sup> S. 812.015(1)(d), F.S.

<sup>14</sup> S. 812.015(9), F.S.

<sup>15</sup> Ch. 2001-115, s. 6, L.O.F.

<sup>16</sup> Email from Florida Department of Corrections, December 18, 2017 (on file with Criminal Justice Subcommittee).

<sup>17</sup> Id. For inmate populations as of December 15, 2017.

<sup>18</sup> Supra, FN 17.

- 195 are on probation for retail theft of \$300 or more; and
- 13,895 are on probation for grand theft of \$300 or more but less than \$5,000.<sup>19</sup>

### Theft Thresholds in Other States

Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.<sup>20</sup>

Year of Change	State	Previous threshold	Enacted threshold
<b>2001</b>	Oklahoma	\$50	\$500
<b>2002</b>	Missouri	\$150	\$500
<b>2003</b>	Alabama	\$250	\$500
	Mississippi	\$250	\$500
<b>2004</b>	Kansas	\$500	\$1,000
	Wyoming	\$500	\$1,000
<b>2005</b>	South Dakota	\$500	\$1,000
<b>2006</b>	Arizona	\$250	\$1,000
	New Mexico	\$250	\$500
	Vermont	\$500	\$900
<b>2007</b>	Colorado	\$500	\$1,000
	Minnesota	\$500	\$1,000
<b>2009</b>	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
<b>2010</b>	California	\$400	\$950
	Illinois	\$300	\$500
	New Hampshire	\$500	\$1,000
	South Carolina	\$1,000	\$2,000
<b>2011</b>	Utah	\$1,000	\$1,500
	Arkansas	\$500	\$1,000
	Nevada	\$250	\$650
	Ohio	\$500	\$1,000
	Georgia	\$500	\$1,500
<b>2012</b>	Rhode Island	\$500	\$1,500
	Colorado	\$1,000	\$2,000
<b>2013</b>	Indiana	Any amount	\$750
	North Dakota	\$500	\$1,000
	Alaska	\$500	\$750
<b>2014</b>	Louisiana	\$500	\$750
	Mississippi	\$500	\$1,000
<b>2015</b>	Alabama	\$500	\$1,500
	Nebraska	\$500	\$1,500

<sup>19</sup> Supra, FN 17.

<sup>20</sup> Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at [http://www.pewtrusts.org/~media/assets/2016/02/the\\_effects\\_of\\_changing\\_state\\_theft\\_penalties.pdf?la=en](http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en) (last visited January 4, 2018).

	Texas	\$1,500	\$2,500
<b>2016</b>	Alaska	\$750	\$1,000
	Hawaii	\$300	\$750
	Kansas	\$1,000	\$1,500
	Maryland	\$1,000	\$1,500
	Oklahoma	\$500	\$1,000
	Tennessee	\$500	\$1,000

The majority of states (30) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.<sup>21</sup>

Value Threshold	States	Total Number
\$200	NJ, VA	2
\$250	MA	1
\$300	FL	1
\$500	IL, KY, NM	3
\$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
\$1,500	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 higher value amounts.<sup>22</sup> A study by the Pew Charitable Trusts evaluated 23 states that changed felony theft thresholds between 2001 and 2011 and found:

- 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.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.<sup>23</sup>

<sup>21</sup> Id.

<sup>22</sup> Lauren Krisai, *Stuck in the 80s: Time for Reform of Florida's Felony Theft Threshold*, The Journal of the James Madison Institute, Spring 2017, [http://reason.org/files/florida\\_theft\\_threshold\\_stuck\\_in\\_1980s.pdf](http://reason.org/files/florida_theft_threshold_stuck_in_1980s.pdf) (last visited January 6, 2018).

<sup>23</sup> Supra, FN 20.

## Effect of the Proposed Changes

### Property Theft

The bill amends the following property theft provisions in s. 812.014, F.S., to increase the values that are the basis for the punishment for the offenses:

Offense	Current Threshold	Proposed Threshold
Second degree petit theft	< \$100	< \$500
First degree petit theft	≥ \$100, but < \$300	≥ \$500, but < \$1,500 <sup>24</sup>
Third degree grand theft	≥ \$300, but < \$20,000	≥ \$1,500, but < \$20,000 <sup>25</sup>
Third degree grand theft of property from a dwelling or its enclosed curtilage	≥ \$100, but < \$300	≥ \$1,500, but < \$5,000 <sup>26</sup>

The bill also deletes the following items from the list of property which, if stolen, is a third degree grand theft and is punishable as a third degree felony:

- A will, codicil, or other testamentary instrument;
- Any fire extinguisher;
- Any property taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d);
- Any stop sign; and
- Anhydrous ammonia<sup>27</sup>

While it is still a crime to steal these items, the offense level of the crime will be based on the property value rather than automatically qualifying as a third degree grand theft.

The bill also amends the enhancement of the statute. Petit theft becomes a third-degree felony only if:

- The offender has two or more prior theft convictions as an adult; and
- The most recent subsequent petit theft offense occurred within three years of the expiration of the offender's most recent theft conviction.

### Retail Theft

The bill amends s. 812.015, F.S., to increase the property value of third degree felony retail theft from \$300 or more, to \$1,500 or more.<sup>28</sup> The bill enhances retail theft to a second degree felony only if:

- The offender has previously been convicted of retail theft 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.

<sup>24</sup> 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 \$159.76 in 2017 dollars and \$300 in 1996 has the same buying power as \$479.28 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

<sup>25</sup> 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 \$675.19 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

<sup>26</sup> Supra, FN 24.

<sup>27</sup> Anhydrous ammonia is a colorless gas used as an agricultural fertilizer and industrial refrigerant, according to the Centers for Disease Control and Prevention, available at:

<https://www.cdc.gov/healthcommunication/toolstemplates/entertainmented/tips/AnhydrousAmmonia.html> (last visited January 6, 2018).

<sup>28</sup> According to the CPI Inflation Calculator of the U.S. Department of Labor's Bureau of Labor Statistics, \$300 in 2001 has the same buying power as \$422.62 in 2017 dollars. Available at: <https://data.bls.gov/cgi-bin/cpicalc.pl> (last visited January 7, 2018).

Other

Lastly, 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, 2018.

B. SECTION DIRECTORY:

**Section 1:** Amends 812.014, F.S., relating to theft.

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

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

**Section 4:** Provides an effective date of July 1, 2018.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered a similar bill, SB 928, on January 8, 2018. The CJIC determined that the bill's increase of property theft thresholds will reduce the need for prison beds by more than 25 beds. The bill's increase of retail theft thresholds will reduce the need for prison beds by an unquantifiable amount.

The CJIC determined that cumulatively the bill's amendments to all sections of law will have a negative significant impact on prison beds, meaning that the bill will overall reduce the need for prison beds by more than 25 beds.<sup>29</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



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A bill to be entitled  
 An act relating to theft offenses; amending s.  
 812.014, F.S.; increasing threshold amounts for  
 certain theft offenses; revising the list of items the  
 theft of which constitutes grand theft of the third  
 degree; revising the circumstances under which petit  
 theft by a person with prior petit theft convictions  
 constitutes a felony of the third degree; amending s.  
 812.015, F.S.; increasing threshold amounts for  
 certain theft offenses; revising circumstances under  
 which an offense of retail theft by a person with a  
 prior conviction of retail theft constitutes a felony  
 of the second degree; amending s. 921.0022, F.S.;  
 conforming provisions of the offense severity ranking  
 chart of the Criminal Punishment Code to changes made  
 by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (c), (d), and (e) of subsection (2)  
 and paragraphs (a), (b), and (c) of subsection (3) of section  
 812.014, Florida Statutes, are amended to read:

812.014 Theft.—  
 (2)  
 (c) It is grand theft of the third degree and a felony of

26 the third degree, punishable as provided in s. 775.082, s.  
 27 775.083, or s. 775.084, if the property stolen is:

- 28 1. Valued at \$1,500 ~~\$300~~ or more, but less than \$5,000.
- 29 2. Valued at \$5,000 or more, but less than \$10,000.
- 30 3. Valued at \$10,000 or more, but less than \$20,000.
- 31 ~~4. A will, codicil, or other testamentary instrument.~~
- 32 4.5. A firearm.
- 33 ~~5.6.~~ A motor vehicle, except as provided in paragraph (a).
- 34 ~~6.7.~~ Any commercially farmed animal, including any animal  
 35 of the equine, bovine, or swine class or other grazing animal; a  
 36 bee colony of a registered beekeeper; and aquaculture species  
 37 raised at a certified aquaculture facility. If the property  
 38 stolen is aquaculture species raised at a certified aquaculture  
 39 facility, then a \$10,000 fine shall be imposed.
- 40 ~~8. Any fire extinguisher.~~
- 41 ~~7.9.~~ Any amount of citrus fruit consisting of 2,000 or  
 42 more individual pieces of fruit.
- 43 ~~10. Taken from a designated construction site identified~~  
 44 ~~by the posting of a sign as provided for in s. 810.09(2)(d).~~
- 45 ~~11. Any stop sign.~~
- 46 ~~12. Anhydrous ammonia.~~
- 47 ~~8.13.~~ Any amount of a controlled substance as defined in  
 48 s. 893.02. Notwithstanding any other law, separate judgments and  
 49 sentences for theft of a controlled substance under this  
 50 subparagraph and for any applicable possession of controlled

51 substance offense under s. 893.13 or trafficking in controlled  
 52 substance offense under s. 893.135 may be imposed when all such  
 53 offenses involve the same amount or amounts of a controlled  
 54 substance.

55  
 56 However, if the property is stolen within a county that is  
 57 subject to a state of emergency declared by the Governor under  
 58 chapter 252, the property is stolen after the declaration of  
 59 emergency is made, and the perpetration of the theft is  
 60 facilitated by conditions arising from the emergency, the  
 61 offender commits a felony of the second degree, punishable as  
 62 provided in s. 775.082, s. 775.083, or s. 775.084, if the  
 63 property is valued at \$5,000 or more, but less than \$10,000, as  
 64 provided under subparagraph 2., or if the property is valued at  
 65 \$10,000 or more, but less than \$20,000, as provided under  
 66 subparagraph 3. As used in this paragraph, the term "conditions  
 67 arising from the emergency" means civil unrest, power outages,  
 68 curfews, voluntary or mandatory evacuations, or a reduction in  
 69 the presence of or the response time for first responders or  
 70 homeland security personnel. For purposes of sentencing under  
 71 chapter 921, a felony offense that is reclassified under this  
 72 paragraph is ranked one level above the ranking under s.  
 73 921.0022 or s. 921.0023 of the offense committed.

74 (d) It is grand theft of the third degree and a felony of  
 75 the third degree, punishable as provided in s. 775.082, s.

76 775.083, or s. 775.084, if the property stolen is valued at  
 77 \$1,500 ~~\$100~~ or more, but less than \$5,000 ~~\$300~~, and is taken  
 78 from a dwelling as defined in s. 810.011(2) or from the  
 79 unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

80 (e) Except as provided in paragraph (d), if the property  
 81 stolen is valued at \$500 ~~\$100~~ or more, but less than \$1,500  
 82 ~~\$300~~, the offender commits petit theft of the first degree,  
 83 punishable as a misdemeanor of the first degree, as provided in  
 84 s. 775.082 or s. 775.083.

85 (3)(a) Theft of any property not specified in subsection  
 86 (2) is petit theft of the second degree and a misdemeanor of the  
 87 second degree, punishable as provided in s. 775.082 or s.  
 88 775.083, and as provided in subsection (5), as applicable.

89 (b) A person who commits petit theft and who has  
 90 previously been convicted of any theft commits a misdemeanor of  
 91 the first degree, punishable as provided in s. 775.082 or s.  
 92 775.083.

93 (c) A person who commits petit theft in the first degree,  
 94 ~~and~~ who has previously been convicted two or more times as an  
 95 adult of any theft, and if the third or subsequent petit theft  
 96 offense occurred within 3 years of the expiration of his or her  
 97 sentence for the most recent theft conviction, commits a felony  
 98 of the third degree, punishable as provided in s. 775.082 or s.  
 99 775.083.

100 Section 2. Subsections (8) and (9) of section 812.015,

101 Florida Statutes, are amended to read:

102 812.015 Retail and farm theft; transit fare evasion;  
 103 mandatory fine; alternative punishment; detention and arrest;  
 104 exemption from liability for false arrest; resisting arrest;  
 105 penalties.—

106 (8) Except as provided in subsection (9), a person who  
 107 commits retail theft commits a felony of the third degree,  
 108 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 109 if the property stolen is valued at \$1,500 ~~\$300~~ or more, and  
 110 the person:

111 (a) Individually, or in concert with one or more other  
 112 persons, coordinates the activities of one or more individuals  
 113 in committing the offense, in which case the amount of each  
 114 individual theft is aggregated to determine the value of the  
 115 property stolen;

116 (b) Commits theft from more than one location within a 48-  
 117 hour period, in which case the amount of each individual theft  
 118 is aggregated to determine the value of the property stolen;

119 (c) Acts in concert with one or more other individuals  
 120 within one or more establishments to distract the merchant,  
 121 merchant's employee, or law enforcement officer in order to  
 122 carry out the offense, or acts in other ways to coordinate  
 123 efforts to carry out the offense; or

124 (d) Commits the offense through the purchase of  
 125 merchandise in a package or box that contains merchandise other

126 than, or in addition to, the merchandise purported to be  
 127 contained in the package or box.

128 (9) A person commits a felony of the second degree,  
 129 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 130 if the person:

131 (a) Violates subsection (8) as an adult and has previously  
 132 been convicted of a violation of subsection (8) within 3 years  
 133 of the expiration of his or her sentence for the conviction; or

134 (b) Individually, or in concert with one or more other  
 135 persons, coordinates the activities of one or more persons in  
 136 committing the offense of retail theft where the stolen property  
 137 has a value in excess of \$3,000.

138 Section 3. Paragraphs (b), (e), and (f) of subsection (3)  
 139 of section 921.0022, Florida Statutes, are amended to read:

140 921.0022 Criminal Punishment Code; offense severity  
 141 ranking chart.-

142 (3) OFFENSE SEVERITY RANKING CHART

143 (b) LEVEL 2

144

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection

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146			Act.
	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
147			
	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
148			
	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
149			
	590.28(1)	3rd	Intentional burning of lands.
150			
	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
151			
	787.04(1)	3rd	In violation of court order, take, entice, etc., minor

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			beyond state limits.
152	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
153	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
154	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
155	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; <u>\$1,500</u> <del>\$300</del> or more but less than \$5,000.
156	812.014(2)(d)	3rd	Grand theft, 3rd degree; <u>\$1,500</u> <del>\$100</del> or more but less than <u>\$5,000</u> <del>\$300</del> , taken from unenclosed curtilage of dwelling.



157	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
158	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
159	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
160	817.52(3)	3rd	Failure to redeliver hired vehicle.
161	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
162	817.60(5)	3rd	Dealing in credit cards of another.
163	817.60(6)(a)	3rd	Forgery; purchase goods,

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			services with false card.
164	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
165	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
166	831.01	3rd	Forgery.
167	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
168	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
169	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
170	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory

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171			notes.
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
172			
	832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
173			
	843.08	3rd	False personation.
174			
	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
175			
	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
176			
177	(e)	LEVEL 5	
178			
	Florida Statute	Felony Degree	Description

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179

316.027(2)(a) 3rd Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.

180

316.1935(4)(a) 2nd Aggravated fleeing or eluding.

181

316.80(2) 2nd Unlawful conveyance of fuel; obtaining fuel fraudulently.

182

322.34(6) 3rd Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

183

327.30(5) 3rd Vessel accidents involving personal injury; leaving scene.

184

379.365(2)(c)1. 3rd Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

185

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

186

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

187

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

188

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

189	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
190	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
191	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
192	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
193	790.01 (2)	3rd	Carrying a concealed firearm.
194	790.162	2nd	Threat to throw or discharge destructive device.
195	790.163 (1)	2nd	False report of bomb,

			explosive, weapon of mass destruction, or use of firearms in violent manner.
196	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
197	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
198	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
199	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
200	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
201	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or

			property.
202	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
203	812.015(8)	3rd	Retail theft; property stolen is valued at <u>\$1,500</u> <del>\$300</del> or more and one or more specified acts.
204	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
205	812.131(2)(b)	3rd	Robbery by sudden snatching.
206	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
207	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
208	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.



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209

817.2341(1),  
 (2) (a) &  
 (3) (a)

3rd

Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

210

817.568 (2) (b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

211

817.611 (2) (a)

2nd

Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

212

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

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213

825.1025(4) 3rd Lewd or lascivious exhibition  
in the presence of an elderly  
person or disabled adult.

214

827.071(4) 2nd Possess with intent to promote  
any photographic material,  
motion picture, etc., which  
includes sexual conduct by a  
child.

215

827.071(5) 3rd Possess, control, or  
intentionally view any  
photographic material, motion  
picture, etc., which includes  
sexual conduct by a child.

216

839.13(2)(b) 2nd Falsifying records of an  
individual in the care and  
custody of a state agency  
involving great bodily harm or  
death.

217

843.01 3rd Resist officer with violence to  
person; resist arrest with

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218			violence.
	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
219			
	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
220			
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
221			
	874.05 (1) (b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
222			
	874.05 (2) (a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
223			
	893.13 (1) (a) 1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d),

224	893.13(1)(c)2.	2nd	<p>(2)(a), (2)(b), or (2)(c)4. drugs).</p> <p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
225	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
226	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug</p>

prohibited under s.  
 893.03(1)(c), (2)(c)1.,  
 (2)(c)2., (2)(c)3., (2)(c)5.,  
 (2)(c)6., (2)(c)7., (2)(c)8.,  
 (2)(c)9., (3), or (4) within  
 1,000 feet of property used for  
 religious services or a  
 specified business site.

227

893.13(1)(f)1.            1st    Sell, manufacture, or deliver  
 cocaine (or other s.  
 893.03(1)(a), (1)(b), (1)(d),  
 or (2)(a), (2)(b), or (2)(c)4.  
 drugs) within 1,000 feet of  
 public housing facility.

228

893.13(4)(b)            2nd    Use or hire of minor; deliver  
 to minor other controlled  
 substance.

229

893.1351(1)            3rd    Ownership, lease, or rental for  
 trafficking in or manufacturing  
 of controlled substance.

230

231

(f) LEVEL 6

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232

Florida	Felony	
Statute	Degree	Description

233

316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
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234

316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
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235

400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
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236

499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
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237

499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
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238

499.0051(4)	2nd	Knowing sale or transfer of
-------------	-----	-----------------------------

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239			prescription drug to unauthorized person.
	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
240			
	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
241			
	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
242			
	784.041	3rd	Felony battery; domestic battery by strangulation.
243			
	784.048 (3)	3rd	Aggravated stalking; credible threat.
244			
	784.048 (5)	3rd	Aggravated stalking of person under 16.
245			
	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
246			
	784.074 (1) (b)	2nd	Aggravated assault on sexually

			violent predators facility staff.
247	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
248	784.081 (2)	2nd	Aggravated assault on specified official or employee.
249	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
250	784.083 (2)	2nd	Aggravated assault on code inspector.
251	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
252	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
253	790.161 (2)	2nd	Make, possess, or throw destructive device with intent



254	790.164(1)	2nd	to do bodily harm or damage property.
255	790.19	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
256	794.011(8)(a)	3rd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
257	794.05(1)	2nd	Solicitation of minor to participate in sexual activity by custodial adult.
258	800.04(5)(d)	3rd	Unlawful sexual activity with specified minor.  Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.

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259	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
260	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
261	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
262	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
263	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
264	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
265	812.015 (9) (a)	2nd	Retail theft; property stolen

			<u>\$1,500</u> <del>\$300</del> or more; second or subsequent <u>adult</u> conviction <u>in specified period</u> .
266	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
267	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
268	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
269	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
270	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
271	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
272	825.1025(3)	3rd	Lewd or lascivious molestation

			of an elderly person or disabled adult.
273	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
274	827.03(2)(c)	3rd	Abuse of a child.
275	827.03(2)(d)	3rd	Neglect of a child.
276	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
277	836.05	2nd	Threats; extortion.
278	836.10	2nd	Written threats to kill or do bodily injury.
279	843.12	3rd	Aids or assists person to escape.
280	847.011	3rd	Distributing, offering to distribute, or possessing with

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281	847.012	3rd	intent to distribute obscene materials depicting minors.
282	847.0135(2)	3rd	Knowingly using a minor in the production of materials harmful to minors.
283	914.23	2nd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
284	944.35(3)(a)2.	3rd	Retaliation against a witness, victim, or informant, with bodily injury.
285	944.40	2nd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
286	944.46	3rd	Escapes.
			Harboring, concealing, aiding

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escaped prisoners.

287

944.47(1)(a)5.            2nd    Introduction of contraband  
(firearm, weapon, or explosive)  
into correctional facility.

288

951.22(1)                3rd    Intoxicating drug, firearm, or  
weapon introduced into county  
facility.

289

290

Section 4. This act shall take effect July 1, 2018.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 733 Contraband in County Detention Facilities

**SPONSOR(S):** Sullivan

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno	Sumner TS CCB
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law prohibits introduction of contraband into state correctional institutions, county detention facilities, and juvenile detention facilities or commitment programs. Contraband is defined differently for each facility.

Only the definition of contraband that pertains to state correctional institutions includes cellular telephones or other portable communication devices. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate any phones discovered and discipline inmates on those grounds. However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how cell phones enter the facility.

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which similarly prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent.

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for prison and jail beds.

The bill provides an effective date of October 1, 2018.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Cell phones in state correctional institutions are a pervasive and documented problem, with the Department of Corrections reporting 38,179 cell phones and accessories discovered in its facilities from 2014 to November 2017.<sup>1</sup> Inmates with cell phones can make unrecorded and unmonitored calls to people outside the facility, sometimes for nefarious purposes. Prison cell phone use has been linked to threats, murder, complex criminal schemes, and escapes.<sup>2</sup> Cell phone use in county detention facilities poses similar risks. Additionally, since many inmates in county detention facilities are awaiting trial, there is a heightened risk that cell phones could be used to intimidate witnesses and obstruct justice.

Florida law prohibits introduction of contraband into state correctional institutions,<sup>3</sup> county detention facilities,<sup>4</sup> and juvenile detention facilities or commitment programs.<sup>5</sup> Introduction of contraband is either a second or third degree felony,<sup>6</sup> depending on the type of contraband introduced and the facility.<sup>7</sup> Contraband, which includes items that may pose a safety concern, is defined differently for each facility. In a state correctional institution, contraband includes:

- Any written or recorded communication or any currency or coin.
- Any article of food or clothing.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.
- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.<sup>8</sup>

In a county detention facility, contraband includes:

- Any written or recorded communication.
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products, cigarette, or cigar.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4).
- Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.

<sup>1</sup> Jason Kelly, *9 Investigates: Records show increase in confiscation of cellphones in Florida prisons*, WFTV, (November 2, 2017) available at: <http://www.wftv.com/news/9-investigates/9-investigates-records-show-increase-in-confiscation-of-cellphones-in-florida-prisons/637065013> (last viewed January 1, 2018).

<sup>2</sup> Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS (September 30, 2017), available at: <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last viewed January 2, 2018); Crimesider Staff, *Indictment: Gang leader ordered hit on baby from jail*, CBS NEWS (May 18, 2016), available at: <https://www.cbsnews.com/news/indictment-gang-member-ordered-hit-on-baby-from-jail/> (last viewed January 2, 2018).

<sup>3</sup> S. 944.47, F.S.

<sup>4</sup> S. 951.22, F.S.

<sup>5</sup> S. 985.711, F.S.

<sup>6</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 & 775.083.

<sup>7</sup> SS. 944.47(2), 951.22(2), & 985.711(2), F.S.

<sup>8</sup> S. 944.47, F.S.

- Any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.<sup>9</sup>

In a juvenile detention facility or commitment program, contraband includes:

- Any unauthorized article of food or clothing.
- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance, as defined in s. 893.02(3), F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive device.

Cellular telephones or other portable electronic devices are only criminalized as contraband in state correctional institutions. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate phones and discipline inmates on those grounds.<sup>10</sup> However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how cell phones enter the facility.<sup>11</sup>

### Effect of Proposed Changes

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which similarly prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third degree felony.

The bill provides an effective date of October 1, 2018.

#### B. SECTION DIRECTORY:

**Section 1:** Amending s. 951.22, F.S., relating to county detention facilities; contraband articles.

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

**Section 3:** Providing an effective date of October 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for prison beds.

<sup>9</sup> S. 951.22, F.S.

<sup>10</sup> See, e.g., Florida Sheriffs Association, *Florida Model Jail Standards*, standard no. 14.1, available at: [https://www.flsheriffs.org/uploads/docs/FMJS\\_07-01-2017.pdf](https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf) (last visited December 14, 2017); Orange County Corrections Department, *Administrative Order No. IO.200 re: Inmate Discipline* (August 30, 2017) (copy on file with Criminal Justice Subcommittee Staff).

<sup>11</sup> Law enforcement may apply for a search warrant to search the contents of a cell phone when the phone constitutes evidence relevant to proving a felony has been committed. S. 933.02, F.S.; *Smallwood v. State*, 113 So.3d 724 (Fla. 2013). As possession of a cell phone in a county detention facility is not currently a felony crime, law enforcement may not obtain a warrant to inspect the contents of a cell phone discovered in a jail unless there is probable cause to connect the phone to another independent crime.

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

1. Revenues:

None.

2. Expenditures:

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for jail beds.

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

None.

**D. FISCAL COMMENTS:**

None.

**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:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to contraband in county detention  
 3           facilities; amending s. 951.22, F.S.; prohibiting  
 4           introduction into or possession on the grounds of any  
 5           county detention facility of any cellular telephone or  
 6           other portable communication device; defining the term  
 7           "portable communication device"; providing criminal  
 8           penalties; amending s. 921.0022, F.S.; conforming  
 9           provisions to changes made by the act; providing an  
 10          effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14          Section 1.   Section 951.22, Florida Statutes, is amended to  
 15   read:

16          951.22   County detention facilities; contraband articles.—

17          (1)   It is unlawful, except through regular channels as  
 18   duly authorized by the sheriff or officer in charge, to  
 19   introduce into or possess upon the grounds of any county  
 20   detention facility as defined in s. 951.23 or to give to or  
 21   receive from any inmate of any such facility wherever said  
 22   inmate is located at the time or to take or to attempt to take  
 23   or send therefrom any of the following articles which are hereby  
 24   declared to be contraband:

25          (a)   ~~for the purposes of this act, to wit:~~ Any written or

26 | recorded communication.†  
 27 |       (b) Any currency or coin.†  
 28 |       (c) Any article of food or clothing.†  
 29 |       (d) Any tobacco products as defined in s. 210.25(12).†  
 30 |       (e) Any cigarette as defined in s. 210.01(1).†  
 31 |       (f) Any cigar.†  
 32 |       (g) Any intoxicating beverage or beverage which causes or  
 33 | may cause an intoxicating effect.†  
 34 |       (h) Any narcotic, hypnotic, or excitative drug or drug of  
 35 | any kind or nature, including nasal inhalators, sleeping pills,  
 36 | barbiturates, and controlled substances as defined in s.  
 37 | 893.02(4).†  
 38 |       (i) Any firearm or any instrumentality customarily used or  
 39 | which is intended to be used as a dangerous weapon.†~~and~~  
 40 |       (j) Any instrumentality of any nature that may be or is  
 41 | intended to be used as an aid in effecting or attempting to  
 42 | effect an escape from a county facility.  
 43 |       (k) Any cellular telephone or other portable communication  
 44 | device intentionally and unlawfully introduced inside the secure  
 45 | perimeter of any county detention facility without prior  
 46 | authorization or consent from the sheriff or the officer in  
 47 | charge of such detention facility. As used in this paragraph,  
 48 | the term "portable communication device" means any device  
 49 | carried, worn, or stored which is designed or intended to  
 50 | receive or transmit verbal or written messages, access or store

51 data, or connect electronically to the Internet or any other  
 52 electronic device and which allows communications in any form.  
 53 Such devices include, but are not limited to, portable two-way  
 54 paggers, hand-held radios, cellular telephones, Blackberry-type  
 55 devices, personal digital assistants or PDA's, laptop computers,  
 56 or any components of these devices which are intended to be used  
 57 to assemble such devices. The term also includes any new  
 58 technology that is developed for similar purposes. Excluded from  
 59 this definition is any device having communication capabilities  
 60 which has been approved or issued by the sheriff or the officer  
 61 in charge for investigative or institutional security purposes  
 62 or for conducting other official business.

63 (2) Whoever violates subsection (1) commits ~~shall be~~  
 64 ~~guilty of~~ a felony of the third degree, punishable as provided  
 65 in s. 775.082, s. 775.083, or s. 775.084.

66 Section 2. Paragraph (f) of subsection (3) of section  
 67 921.0022, Florida Statutes, is amended to read:

68 921.0022 Criminal Punishment Code; offense severity  
 69 ranking chart.-

70 (3) OFFENSE SEVERITY RANKING CHART

71 (f) LEVEL 6

72

Florida	Felony	
Statute	Degree	Description

73

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74	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
75	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
76	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
77	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
78	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
79	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
	775.0875(1)	3rd	Taking firearm from law

			enforcement officer.
80	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
81	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
82	784.041	3rd	Felony battery; domestic battery by strangulation.
83	784.048(3)	3rd	Aggravated stalking; credible threat.
84	784.048(5)	3rd	Aggravated stalking of person under 16.
85	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
86	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
87	784.08(2)(b)	2nd	Aggravated assault on a person



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			65 years of age or older.
88	784.081(2)	2nd	Aggravated assault on specified official or employee.
89	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
90	784.083(2)	2nd	Aggravated assault on code inspector.
91	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
92	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
93	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
94	790.164(1)	2nd	False report concerning bomb,

			explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
95	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
96	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
97	794.05(1)	2nd	Unlawful sexual activity with specified minor.
98	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
99	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

100	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
101	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
102	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
103	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
104	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
105	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
106	812.015(9)(b)	2nd	Retail theft; property stolen

			\$3,000 or more; coordination of others.
107	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
108	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
109	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
110	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
111	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
112	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
113	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is

			valued at less than \$10,000.
114			
	827.03(2)(c)	3rd	Abuse of a child.
115			
	827.03(2)(d)	3rd	Neglect of a child.
116			
	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
117			
	836.05	2nd	Threats; extortion.
118			
	836.10	2nd	Written threats to kill or do bodily injury.
119			
	843.12	3rd	Aids or assists person to escape.
120			
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
121			
	847.012	3rd	Knowingly using a minor in the production of materials harmful

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122			to minors.
123	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
124	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
125	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
126	944.40	2nd	Escapes.
127	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

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951.22(1)

3rd

Introduction of contraband into  
county detention facility

~~Intoxicating drug, firearm, or  
weapon introduced into county  
facility.~~

129

130

Section 3. This act shall take effect October 1, 2018.