

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 693 Criminal Offenses

**SPONSOR(S):** Alexander

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 3 N	Merlin	White
2) Justice Appropriations Subcommittee		Welty	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

In Florida, there are a number of statutes that impose penalties based on the value of money or property that is stolen or obtained through fraud. Most of these dollar amounts have not been changed in many years.

The bill amends the following offenses to increase the threshold amounts from \$300 to \$1,000:

- Failing to remit taxes or state funds: (\$300 level added in 1993).
- Theft of emergency medical equipment and law enforcement equipment (\$300 level added in 2001).
- Certain types of grand theft (\$300 levels added in 1986 and 1996).

The bill increases the minimum threshold amount for first degree misdemeanor petit theft and certain third degree felony theft of property from a dwelling from \$100 to \$300 and the maximum amount for these offenses from \$300 to \$1,000 (amounts added in 1996).

The bill also amends the following offenses to increase the threshold amounts from \$300 to \$500:

- Retail and farm theft (\$300 level added in 2001).
- Dealing in stolen property by use of the Internet (\$300 level added in 2001).

Finally, the bill amends the following offenses to increase the threshold amounts from \$150 to \$500:

- Stopping payment to producers of farm or grove products (\$150 level added in 1986).
- Stopping payment with intent to defraud (\$150 level added in 1986).
- Worthless checks, drafts or debit card orders and obtaining property or services from such instruments (\$150 level added in 1986).
- Prosecution for worthless checks, drafts, debit card orders, or EFTs made to pay any tax or amount administered by the Department of Revenue (\$150 level added in 1987).

The bill also makes conforming changes to the Offense Severity Ranking Chart and reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined the bill will have a negative significant impact on the prison population, meaning the need for prison beds will decrease by more than 25 beds.

The bill takes effect on July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Overview of Property Crimes and Dollar Thresholds**

In many states, the amount of harm or damage caused by a defendant is a factor used to determine the severity of an offense; thus, the penalties for an offense may be based on the value of damaged or stolen goods.<sup>1</sup> Typically, “states set a monetary amount that qualifies as a felony theft offense, also known as the felony theft threshold.”<sup>2</sup> According to a report published by the National Conference of State Legislatures (“NCSL”), “[t]he majority of states—30 and the District of Columbia—have felony theft thresholds of \$1,000 or greater, 15 have set them at \$500 to \$950, and five have thresholds below \$500. Legislatures have recently revisited thresholds to ensure these amounts keep pace with inflation and the increase in price of consumer goods. Since 2005, at least 26 states and the District of Columbia have increased the felony theft threshold.”<sup>3</sup>

In Florida, there are a number of statutes which impose penalties based on the threshold value of money or items that are stolen or obtained through fraud.

##### **Failure to Remit Taxes or State Funds**

Section 212.15, F.S., provides that any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or the use or benefit thereof, fails to remit taxes and is guilty of theft of state funds, punishable as follows:<sup>4</sup>

- If the total amount of stolen revenue is less than \$300, the offense is a misdemeanor of the second degree.<sup>5</sup>
  - Upon a second conviction, the offender is guilty of a misdemeanor of the first degree.<sup>6</sup>
  - Upon a third or subsequent conviction, the offender is guilty of a felony of the third degree.<sup>7</sup>
- If the total amount of stolen revenue is \$300 or more, but less than \$20,000, the offense is a felony of the third degree.
- If the total amount of stolen revenue is \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree.<sup>8</sup>
- If the total amount of stolen revenue is \$100,000 or more, the offense is a felony of the first degree.<sup>9</sup>

The \$300 threshold was adopted in 1993; previously, the threshold was \$100.<sup>10</sup> According to the Bureau of Labor Statistics, \$300 in 1993 has the same buying power as \$504.16 in 2017. This is based on the Consumer Price Index (“CPI”) Inflation Calculator. The CPI Inflation Calculator uses the average Consumer Price Index for a given calendar year. This data represents changes in prices of all goods

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<sup>1</sup> Alison Lawrence, *Making Sense of Sentencing: State Systems and Policies*, National Conference of State Legislatures (“NCSL Report”) at 2, June 2015, available at <https://www.ncsl.org/documents/cj/sentencing.pdf> (last viewed Feb. 23, 2017).

<sup>2</sup> *Id.*

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

<sup>4</sup> s. 212.15(2)(a)-(d), F.S.

<sup>5</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. ss. 775.082 and 775.083, F.S.

<sup>6</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. ss. 775.082 and 775.083, F.S.

<sup>7</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. ss. 775.082 and 775.083, F.S.

However, if the third degree felony is not a forcible felony (excluding a third degree felony under ch. 810, F.S.), and total sentence points are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction unless the court makes written findings that a nonstate prison sanction could present a danger to the public. s. 775.082(10), F.S.

<sup>8</sup> A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. ss. 775.082 and 775.083, F.S.

<sup>9</sup> A first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. ss. 775.082 and 775.083, F.S.

<sup>10</sup> Ch. 1993-233, L.O.F.

and services purchased for consumption by urban households. This index value has been calculated every year since 1913.<sup>11</sup>

### *Effect of the Bill*

The bill amends s. 212.15(2)(a) and (b), F.S., to increase the minimum threshold from \$300 to \$1,000. Thus, under the bill, it is a second degree misdemeanor to steal less than \$1,000 in revenue and a third degree felony to steal \$1,000 or more, but less than \$20,000 in revenue.

### **Theft**

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain to use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- 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>12</sup>

Theft is categorized 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 defendant, the defendant's history of theft convictions or, in some cases, the type of property taken. Currently:

- Second degree petit theft, a second degree misdemeanor, is theft of property valued at less than \$100.<sup>13</sup>
- First degree petit theft, a first degree misdemeanor, is theft of property valued at \$100 or more but less than \$300.<sup>14</sup>
  - The threshold amounts for first degree petit theft were established in Chapter 1996-388, Laws of Florida and have not been amended since that time.<sup>15</sup>
- Third degree grand theft, a third degree felony, is: theft of property valued at \$300 or more but less than \$5,000; or \$5,000 or more but less than \$10,000; or \$10,000 or more but less than \$20,000; or theft of specified property (e.g., a will, a codicil, a firearm, fire extinguisher, or stop sign).<sup>16</sup> The \$300 threshold was adopted in 1986.<sup>17</sup> Previously, the threshold was \$100.
- Theft of property from a dwelling or its unenclosed curtilage is third degree grand theft, a third degree felony, if the property is valued at \$100 or more, but less than \$300.<sup>18</sup>
  - The \$100 and \$300 threshold amounts for such theft were established in Chapter 1996-388, Laws of Florida and have not been amended since that time.

Second degree grand theft, a second degree felony, is theft of:

- Property valued at \$20,000 or more but less than \$100,000;
- Cargo valued at less than \$50,000 in specified circumstances; or
- Emergency medical equipment or law enforcement equipment valued at \$300 or more in specified circumstances.<sup>19</sup>

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<sup>11</sup> For the current year, the latest monthly index value is used." See Website for the Bureau of Labor Statistics, *available at* [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last viewed March 31, 2017).

<sup>12</sup> s. 812.014(1), F.S.

<sup>13</sup> s. 812.014(3)(a), F.S.

<sup>14</sup> s. 812.014(2)(e), F.S.

<sup>15</sup> The CPI Inflation Calculator reflects that \$100 in 1996 has the same buying power as \$154.77 in 2017, while \$300 in 1996 has the same buying power as \$464.32 in 2017. See footnote 10.

<sup>16</sup> s. 812.014(2)(c), F.S.

<sup>17</sup> Ch. 1986-161, L.O.F. In 1986, section 812.014(2)(b), F.S., was amended to increase the dollar threshold from \$100 to \$300. A violation of that subsection was grand theft of the second degree and a felony of the third degree. That subsection later became the current s. 812.014(2)(c), F.S.

<sup>18</sup> s. 812.014(2)(d), F.S.

<sup>19</sup> s. 812.014(2)(b)1-4, F.S. However, theft in this category is reclassified from a second degree felony to a first degree felony if the theft occurs within a county subject to a state of emergency declared by the Governor, is committed after the declaration is made, and is facilitated by conditions arising from the emergency. *Id.* The section pertaining to theft of emergency medical equipment and law enforcement equipment valued at \$300 or more is set forth s. 812.014(2)(b)3-4, F.S.

- The \$300 threshold for theft of such equipment was added in Chapter 2001-115, Laws of Florida, and has not been amended since that time.

First degree grand theft, a first degree felony, is:

- Theft of property valued at \$100,000 or more;
- Theft of a semitrailer deployed by a law enforcement officer;
- Theft of cargo valued at \$50,000 or more in specified circumstances; or
- Grand theft and, in the course of committing the offense, a motor vehicle is used as specified or the offender causes damage to the real or personal property of another in excess of \$1,000.<sup>20</sup>

#### *Effect of the Bill*

The bill amends s. 812.014(2)(b)3. and 4. and (c)1., F.S., to increase the minimum threshold from \$300 to \$1,000 for:

- Second degree grand theft of emergency medical equipment and law enforcement equipment. Thus, under the bill, it is a second degree felony to steal \$1,000 or more of such equipment.
- Third degree grand theft. Thus, under the bill it is a third degree felony, to steal \$1,000 or more, but less than \$5,000 of unspecified property.

The bill also amends s. 812.014(2)(d) and (e), F.S., to increase the minimum threshold of \$100 to \$300 and the maximum value of \$300 to \$1,000 for:

- Theft of property from a dwelling or its unenclosed curtilage. Thus, under the bill, it is a third degree felony to steal \$300 or more, but less than \$1,000 of such property.
- First degree petit theft. Thus, under the bill, it is a first degree misdemeanor to steal \$300 or more, but less than \$1,000 of unspecified property.

#### **Retail Theft**

Section 812.015(1)(d), F.S., defines retail theft as:

- 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.

Theft defined as retail theft is punishable under s. 812.014, F.S., and like any other type of theft, must meet the elements of the applicable theft offense under that statute. However, in part relevant to this bill, s. 812.015(8), F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the theft in a specified manner (e.g., 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).<sup>21</sup>

The language regarding the \$300<sup>22</sup> threshold was added in Chapter 2001-115 and has not been amended since that time.

#### *Effect of the Bill*

The bill amends s. 812.015(8), F.S., to increase the minimum threshold amount for the above-described third degree felony retail theft offense from \$300 to \$500.

<sup>20</sup> s. 812.014(2)(a), F.S.

<sup>21</sup> s. 812.014(8), F.S.

<sup>22</sup> The CPI Inflation Calculator reflects that \$300 in 2001 has the same buying power as \$411.36 in 2017. See footnote 10.

### **Dealing in Stolen Property by Use of the Internet**

Section 812.0195(1) and (2), F.S., provides that any person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows, or has reasonable cause to believe, is stolen commits:

- A misdemeanor of the second degree if the value of the property is less than \$300; or
- A felony of the third degree if the value of the property is \$300 or more.

Like the retail theft statute, the language above regarding the \$300 amounts were added in Chapter 2001-115, F.S. and has not changed since that time.

#### *Effect of the Bill*

The bill amends s. 812.0195(1) and (2), F.S., to increase the threshold amounts for the above-described offenses from \$300 to \$500.

### **Stopping Payment; Purchase of Farm or Grove Products**

Section 832.04(1), F.S., provides penalties for making, drawing, uttering, delivering, or giving a check, draft, or written order to a producer of farm or grove products, with the intent to defraud, obtaining the product, and then stopping payment on the monetary instrument. A violation is:

- A misdemeanor of the second degree if the value of the product secured for or on account of such check, draft, or written order is less than \$150.
- A misdemeanor of the first degree if the value if the product secured for or on account of such check, draft, or written order is \$150 or more.

The previous threshold set in 832.04, F.S., was \$50. This amount was raised to the current \$150<sup>23</sup> level in Chapter 1986-161, Laws of Florida and has not changed since that time.

#### *Effect of the Bill*

The bill amends s. 832.04(1), F.S., to increase the threshold amounts for the above-described offenses from \$150 to \$500.

### **Stopping Payment with Intent to Defraud**

Section 832.041(1), F.S., provides penalties for making, drawing, uttering, delivering, or giving a check, draft, or written order to any person, with the intent to defraud, securing goods and services, and then stopping payment on the monetary instrument. A violation is:

- A misdemeanor of the second degree if the value of the goods or services secured for or on account of such check, draft, or written order is less than \$150.
- A felony of the third degree if the value of the goods or services secured for or on account of such check, draft, or written order is \$150 or more.

The previous threshold set forth in this statute was \$50. This amount was raised to the current \$150 level in Chapter 1986-161, Laws of Florida and has not changed since that time.

#### *Effect of the Bill*

The bill amends s. 832.041(1), F.S., to increase the threshold amounts for the above-described offenses from \$150 to \$500.

### **Worthless Checks, Drafts, and Debit Card Orders**

Section 832.05(2), F.S., provides that it is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository, or to use a debit card, for the payment of money or its equivalent, knowing at the time of the drawing, making, uttering, issuing, or delivering such check or draft, or at the time of using such debit card, that

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<sup>23</sup> The CPI Inflation Calculator reflects that \$150 in 1986 has the same buying power as \$332.35 in 2017. See footnote 10.

the maker or drawer does not have sufficient funds on deposit in or credit with such bank or depository with which to pay the same on presentation. An exception to the statute is that it does not apply to:

- Any check when the payee or holder knows or has been expressly notified prior to the drawing or uttering of the check, or has reason to believe, that the drawer did not have on deposit or to the drawer's credit with the drawee sufficient funds to ensure payment as aforesaid, nor does this section apply to any postdated check.

A violation of s. 832.05(2), F.S., is a misdemeanor of the first degree unless the check, draft, debit card order, or other written order drawn, made, uttered, issued, or delivered is in the amount of \$150, or its equivalent, or more and the payee or a subsequent holder thereof receives something of value therefor. In that event, the violation constitutes a felony of the third degree.

The previous threshold set in 832.05, F.S., was \$50. This amount was raised to the current \$150 level in Chapter 1986-161, Laws of Florida and has not changed since that time.

#### *Effect of the Bill*

The bill amends s. 832.05(2)(b) and (4)(c), F.S., to increase the threshold amounts for the above-described offenses from \$150 to \$500.

#### **Prosecution for Worthless Checks, Drafts, Debit Card Orders, or Electronic Funds Transfers Made to Pay Any Tax or Associated Amount Administered by the Department of Revenue**

Section 832.062, F.S., prohibits drawing, making, uttering, issuing, or delivering worthless checks or monetary instruments or electronic funds transfers ("EFTs") to the Department of Revenue ("DOR") knowing at the time that there are insufficient funds with which to make payment. An exception to the statute is that it does not apply to:

- Any check or EFTs when DOR knows or has been expressly notified prior to the drawing or uttering of the check or the sending or initiating the EFT, or has reason to believe, that the drawer, sender, or receiver did not have on deposit or to the drawer's, sender's, or receiver's credit with the drawee or receiving bank or depository sufficient funds to ensure payment, and does not apply to any postdated check.

A violation of s. 832.062, F.S., is a misdemeanor of the second degree unless the check, draft, debit card order, or other written order drawn, made, uttered, issued, or delivered, or EFT made, sent, instructed, ordered, or initiated, or caused or directed to be made, sent, instructed, ordered, or initiated is in the amount of \$150 or more. In that event, the violation constitutes a felony of the third degree

The language regarding the \$150<sup>24</sup> value or threshold was added in Chapter 87-102, Laws of Florida and has not changed since that time.

#### *Effect of the Bill*

The bill amends s. 832.062(2), F.S., to increase the threshold amount for the above-described offenses from \$150 to \$500.

#### **The Criminal Punishment Code**

The Criminal Punishment Code ("CPC") applies to sentencing for felony offenses committed on or after October 1, 1998.<sup>25</sup> Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe), with descriptions of the offenses, and are assigned points based on the severity of the offense as determined by the legislature.<sup>26</sup> If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.<sup>27</sup>

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<sup>24</sup> The CPI Inflation Calculator reflects that \$150 in 1987 has the same buying power as \$320.65 in 2017. See footnote 10.

<sup>25</sup> s. 921.002, F.S.

<sup>26</sup> s. 921.0022, F.S.

<sup>27</sup> s. 921.0023, F.S.

A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record, and other aggravating factors.<sup>28</sup> The points are added in order to determine the "lowest permissible sentence" for the offense.<sup>29</sup> A judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating "circumstances or factors that reasonably justify the downward departure."<sup>30</sup> Generally, the permissible sentence (absent downward departure) for an offense ranges from the calculated lowest permissible sentence to the statutory maximum for the primary offense. The statutory maximum sentence for a first degree felony is 30 years, for a second degree felony is 15 years, and for a third degree felony is 5 years.<sup>31</sup>

*Effect of the Bill:*

The bill amends s. 921.0022(a)-(e), F.S., to make conforming changes for the bill's amendments to the statutory amounts and statutory thresholds for above-described offenses.

*Other Effects of the Bill:*

The bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

The bill takes effect on July 1, 2017.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 212.15, F.S., relating to taxes declared state funds; penalties for failure to remit taxes; due and delinquent dates; judicial review.

Section 2. Amends s. 812.014, F.S., relating to theft.

Section 3. Amends s. 812.015, F.S., relating to retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.

Section 4. Amends s. 812.0195, F.S., relating to dealing with stolen property by use of the Internet.

Section 5. Amends s. 832.04, F.S., relating to stopping payment; purchase of farm or grove products.

Section 6. Amends s. 832.041, F.S., relating to stopping payment with intent to defraud.

Section 7. Amends s. 832.05, F.S., relating to giving worthless checks, drafts, and debit card orders; penalty; duty of drawee; evidence; costs; complaint form.

Section 8. Amends s. 832.062, F.S., relating to prosecution for worthless checks, drafts, debit card orders, or electronic funds transfers made to pay any tax or associated amount administered by the Department of Revenue.

Section 9. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 10. Reenacts s. 634.319, F.S., relating to reporting and accounting for funds.

Section 11. Reenacts s. 634.421, F.S., relating to reporting and accounting for funds.

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<sup>28</sup> s. 921.0024, F.S.

<sup>29</sup> *Id.*

<sup>30</sup> s. 921.0026, F.S.

<sup>31</sup> s. 775.082, F.S.

Section 12. Reenacts s. 636.238, F.S., relating to penalties for violation of this part.

Section 13. Reenacts s. 642.038, F.S., relating to reporting and accounting for funds.

Section 14. Reenacts s. 705.102, F.S., relating to reporting lost or abandoned property.

Section 15. Reenacts s. 812.0155, F.S., relating to suspension of driver license following an adjudication of guilt for theft.

Section 16. Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.

Section 17. Reenacts s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 18. Provides an effective date of July 1, 2017.

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

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

1. Revenues: The bill does not appear to have any impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined that **each** section of law amended by the bill will reduce the need for prison beds by an insignificant amount, which is defined as less than 10 prison beds. However, CJIC determined that the cumulative effect of the bill would reduce the need for prison beds by a significant amount, which is defined as a reduction of more than 25 prison beds.<sup>32</sup>

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

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill raises the thresholds for felonies and misdemeanors. Since the bill raises the threshold for misdemeanor offenses, there may be an indeterminate fiscal impact to local governments, as individuals previously eligible for state sanctions may now be eligible to be held in county jails or on county probation.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

### **D. FISCAL COMMENTS: None.**

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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<sup>32</sup> Criminal Justice Impact Conference <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB693.pdf>  
**STORAGE NAME:** h0693b.JUA  
**DATE:** 4/3/2017



2. Other: None.

B. RULE-MAKING AUTHORITY: The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

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

N/A