

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 549 Theft

**SPONSOR(S):** Criminal Justice Subcommittee, Rommel and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 3 N, As CS	Butcher	Hall
2) Justice Appropriations Subcommittee	11 Y, 3 N	Saag	Keith
3) Judiciary Committee		Butcher	Kramer

### SUMMARY ANALYSIS

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions, the circumstances under which the theft occurs, or the type of property stolen. Specifically, s. 812.014(2)(d), F.S., prohibits a person from stealing property valued at \$100 or more, but less than \$750, when such property is taken from a dwelling or the unenclosed curtilage of a dwelling. A violation of the prohibition is a third degree felony and ranked as a Level 2 offense on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

CS/HB 549 amends s. 812.014, F.S., to reduce the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from \$100 or more, but less than \$750, to \$40 or more, but less than \$750. Additionally, the bill creates new offenses relating to theft from a dwelling or unenclosed curtilage of a dwelling, including: a third degree felony, ranked as a Level 4 offense, if the property stolen is valued at \$750 or more; a second degree felony, ranked as a Level 5 offense, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof, and; a first degree misdemeanor, if the property stolen is valued at less than \$40. If a person having one prior theft conviction commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 2 offense. If a person having two or more prior theft convictions commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 4 offense.

In recent years, some retail merchants have experienced an increase in another type of property theft called "smash-and-grab" theft. In this form of organized retail crime, a group of offenders enter a retail store en masse to steal merchandise, typically overwhelming the merchant's employees and preventing the merchant from stopping the theft. In recent years, law enforcement has reported such offenders utilizing social media to coordinate illegal group activity.

CS/HB 549 amends s. 812.015, F.S., to:

- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense, punishable as a third degree felony.
- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense and, in the course of organizing or committing the offense, soliciting the participation of another person in the offense through the use of a social media platform, as defined in s. 501.2041(1), F.S., punishable as a second degree felony.
- Enhance the criminal penalty to a first degree felony for specified violations of retail theft, when committed by a person who has two or more prior specified retail theft convictions or who possesses a firearm during the commission of a specified retail theft offense.
- Revise specified aggregation criteria for retail theft offenses to:
  - Increase the period in which the number of thefts or the value of merchandise stolen during individual thefts may be aggregated to determine the total number of thefts or value of property stolen, from 30 days to 365 days.
  - Decrease the number of theft offenses under ss. 812.015(8)(f) and 812.015(9)(d), F.S., where an offender must commit a certain aggregate number of thefts within a specified timeframe and obtain a specified number of items of merchandise, from *five* thefts to *three* thefts.

The bill may have a positive indeterminate impact on jail and prison beds. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

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

**STORAGE NAME:** h0549c.JDC

**DATE:** 2/12/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling**

##### Background

In recent years, the rise of e-commerce has led to an increase in “porch piracy”, a crime that occurs when a person or group of persons steal a package or other mail parcel from the owner’s porch or other area near the owner’s home before he or she has the opportunity to retrieve the package. Nearly eight in ten Americans have reported falling victim to such package theft in 2022, totaling an estimated 260 million packages worth \$19.5 billion.<sup>1</sup> At least eight states have specifically made package theft a felony.<sup>2</sup>

##### *Florida Law*

#### **Burglary**

Section s. 810.02, F.S., prohibits a person from committing burglary by:

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are at the time open to the public or the person’s entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
  - Surreptitiously, with the intent to commit an offense therein;
  - After permission to remain is withdrawn, with the intent to commit an offense therein; or
  - To commit or attempt to commit a forcible felony.<sup>3</sup>

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

- A burglary or attempted burglary of an unoccupied structure or conveyance is a third degree felony.<sup>4,5</sup>
- A burglary of a dwelling, an occupied structure or conveyance, or an authorized emergency vehicle is a second degree felony.<sup>6,7</sup>
- A burglary is a first degree felony when an offender:<sup>8,9</sup>
  - Commits an assault or a battery;
  - Becomes armed with explosives or a dangerous weapon within the premises he or she is burglarizing;
  - Enters a dwelling or structure and:

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<sup>1</sup> Ana Durrani, *The Worst States For Porch Pirates 2024* (May 18, 2023), Forbes, <https://www.forbes.com/home-improvement/home-security/worst-states-for-porch-pirates/> (last visited Feb. 12, 2024).

<sup>2</sup> *Id.* These states include Arkansas (Ark. Code s. 5-36-103(b)(3) (2023); Class D felony), Georgia (Ga. Code s. 16-8-24 (2023); felony, requirement that person possess minimum of ten separate pieces of stolen mail addressed to three or more different mailboxes and addresses), Kentucky (Ky. Rev. Stat. Ann. s. 514.140 (2023); Class D felony), Michigan (Mich. Comp. Laws s. 445.33 (2023); misdemeanor for first violation; felony for second or subsequent violation), New Jersey (N.J. Stat. s. 2C:20-2 (2023); felony crime of the second degree), Oklahoma (Okla. Stat. tit. 21, s. 1740.2 (2023); misdemeanor; felony if three or more separate offenses committed within 60-day period), Tennessee (Tenn. Code s. 39-14-129 (2023); misdemeanor for first violation; felony for second or subsequent violation), and Texas (TX Penal Code Ann. s. 31.20 (2023); misdemeanor if mail stolen from fewer than 10 addresses; state jail felony if mail stolen from at least 10 but fewer than 30 addresses; felony if mail stolen from 30 or more addresses).

<sup>3</sup> “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

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

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

<sup>6</sup> S. 810.02(3), F.S.

<sup>7</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>8</sup> S. 810.02(2), F.S.

<sup>9</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

- Causes damage to a dwelling or structure with a motor vehicle; or
- Causes damage to a dwelling or structure over \$1,000.

Under ch. 810, F.S., a:

- “Dwelling” means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof;<sup>10</sup>
- “Structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof;<sup>11</sup> and
- “Conveyance” includes any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.<sup>12</sup>

In *State v. Hamilton*,<sup>13</sup> the Florida Supreme Court (FSC) held that Florida’s burglary statute requires that “curtilage” be enclosed in order to prove a violation of s. 810.02, F.S. In *Hamilton*, the defendant was alleged to have entered the yard of a home to steal motors attached to a boat, but the yard was not enclosed by fencing or shrubs or in any other manner.<sup>14</sup> Although the standard jury instruction for burglary provided that “[s]tructure means any building of any kind, either temporary or permanent, that has a roof over it, and the *enclosed* space of ground and outbuildings immediately surrounding the structure” (emphasis added), the trial court gave a modified instruction that contained no requirement that the yard be “enclosed.”<sup>15,16</sup> The FSC concluded that the trial court committed reversible error and that the enclosure requirement in the standard jury instruction was a necessary element to prove burglary under s. 810.02, F.S.<sup>17</sup>

Even though there must be an enclosure to prove that a person committed burglary, the enclosure need not be continuous and may have an ungated opening for entering and exiting.<sup>18</sup> For purposes of burglary, a “dwelling” also includes an attached porch or attached garage.<sup>19,20</sup>

Under current law, whether a package thief commits burglary may depend on where a package or other mail parcel is located, and whether or not that location is part of the enclosed curtilage of the dwelling. For example, a package thief who steals a package from the front of a driveway or a mailbox near the road may not have committed burglary, whereas a package thief who enters a screened-off front porch and steals a package near a front door or an attached porch may have committed burglary.

### **Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling**

Generally, a person commits theft by knowingly obtaining or using, or endeavoring to obtain or to use, the property of another with the intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or 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>21</sup>

<sup>10</sup> S. 810.011(2), F.S.

<sup>11</sup> However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of the absence of a wall or roof. S. 810.011(2), F.S.

<sup>12</sup> “To enter a conveyance” includes taking apart any portion of the conveyance. However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist. S. 810.011(3), F.S.

<sup>13</sup> 660 So.2d 1038 (Fla. 1995).

<sup>14</sup> *Id.* at 1039.

<sup>15</sup> *Id.*

<sup>16</sup> Fla. Std. Jury Instr. 13.1 (Crim.). The current standard jury instruction for burglary still defines “structure” as that term was defined in *Hamilton*.

<sup>17</sup> *Supra*, note 13 at 1044–45.

<sup>18</sup> *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

<sup>19</sup> *Id.*

<sup>20</sup> See also *supra*, note 17, and s. 810.011(2), F.S.

<sup>21</sup> S. 812.014(1), F.S.

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender’s prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds and general property types are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First Degree Felony
	≥ \$20,000, but < \$100,000	Second Degree Felony
	≥ \$10,000, but < \$20,000	Third Degree Felony
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$750	First Degree Misdemeanor
	< \$100	Second Degree Misdemeanor

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first-degree misdemeanor.<sup>22</sup> Petit theft committed by a person with two or more previous theft convictions is a third-degree felony.<sup>23</sup>

Under s. 812.014(2)(d), F.S., a person commits grand theft of the third degree and a felony of the third degree if the property stolen is valued at \$100 or more, but less than \$750, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1). “Dwelling” is defined the same as in s. 810.011(2), F.S., relating to burglary, and “unenclosed curtilage” is defined the same as in s. 810.09(1), F.S., meaning the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

Theft from a dwelling or the unenclosed curtilage of a dwelling under s. 812.014(2)(d), F.S., captures a broader scope of theft activity than burglary, which specifically requires that any curtilage from which the taking may occur to be *enclosed*. As such, under current law, a package thief who steals a package valued at \$100 or more, but less than \$750, from the unenclosed curtilage of a dwelling commits theft under s. 812.014(2)(d), but not burglary under s. 810.02, F.S.

Additionally, s. 812.014(2)(d), F.S., does not include an offense that takes into account an offender’s prior record of theft convictions, or the number of dwellings from which the offense is committed.

<sup>22</sup> S. 812.014(3)(b), F.S.  
<sup>23</sup> S. 812.014(3)(c), F.S.  
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**DATE:** 2/12/2024

## Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>24</sup> are listed in a single offense severity ranking chart (OSRC),<sup>25</sup> which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.<sup>26,27</sup> A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.<sup>28,29</sup> The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.<sup>30</sup>

Theft from a dwelling or the unenclosed curtilage of a dwelling under s. 812.014(2)(d), F.S., is currently ranked as a Level 2 offense on the OSRC.

### Effect of Proposed Changes – Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling

CS/HB 549 amends s. 812.014, F.S., to reduce the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from the current threshold of \$100 or more, but less than \$750, to \$40 or more, but less than \$750. The bill continues to rank the offense as a Level 2 offense on the OSRC, the same as current law.

Additionally, the bill creates several new offenses relating to theft from a dwelling or unenclosed curtilage of a dwelling, including:

- Grand theft of the third degree, punishable as a third degree felony, if the property stolen is valued at \$750 or more. The new offense is ranked as a Level 4 offense on the OSRC.
- Grand theft of the second degree, punishable as a second degree felony, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof. The new offense is ranked as a Level 5 offense on the OSRC.
- Petit theft of the first degree, punishable as a first degree misdemeanor, if the property stolen is valued at less than \$40.
  - If a person having one prior theft conviction commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 2 offense on the OSRC.
  - If a person having two or more prior theft convictions commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 4 offense on the OSRC.

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<sup>24</sup> All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

<sup>25</sup> S. 921.0022, F.S.

<sup>26</sup> S. 921.0022(2), F.S.

<sup>27</sup> Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

<sup>28</sup> Sections 921.0022 and 921.0024, F.S.

<sup>29</sup> A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

<sup>30</sup> If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

## Retail Theft

### Background

#### *Organized Retail Crime*

Instances of organized retail crime (ORC) commonly involve premeditated crimes where multiple offenders operate in different specified roles or positions.<sup>31</sup> A smash-and-grab theft is a form of ORC in which a group of participants enter a retail store en masse and steal merchandise. Typically, the merchant's employees are overwhelmed by the large number of participants, whose numbers prevent the merchant from stopping the theft and cause panic among shoppers.<sup>32</sup> Smash-and-grab thefts occur across the country, and in the past, law enforcement has reported that offenders utilize social media to coordinate illegal group activity.<sup>33</sup>

Regarding ORC, the National Retail Federation published the following data gathered from its 2023 Retail Security Survey:<sup>34</sup>

- In Fiscal Year 2022, 81 percent of respondents reported that ORC offenders had grown more violent. In 2023, more than two-thirds (67 percent) of respondents said that they were seeing even more violence and aggression from ORC perpetrators compared with a year ago.
- The most aggressive or violent shoplifters, as reported by respondents, are those involved in groups, gangs and smash-and-grab thefts, followed by repeat offenders.
- When taken as a percentage of total retail sales in 2022, "shrink," or the measurement of losses calculated during a specific period of time, represented \$112.1 billion in losses, up from \$93.9 billion in 2021. Theft – both internal and external – accounted for nearly two-thirds (65 percent) of shrink.
- ORC accounted for almost 5 percent, or \$4.7 billion, of shrink.<sup>35</sup>

#### *Florida Law*

Under s. 812.015(1)(d), F.S., retail theft includes taking any of the following actions with the intent to deprive a merchant of the possession, use, benefit, or full retail value of property:

- Taking possession of, or carrying away, 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.

Under s. 812.015(8)(a)-(e), F.S., retail theft is a third degree felony if the property stolen is valued at \$750 or more, and a person:

- Individually commits retail theft, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period<sup>36</sup> to determine the value of the property stolen;

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<sup>31</sup> Storm Suitter, *Organized Retail Crime Methods and How to Prevent Them* (Sep. 28, 2021), LiveView Technologies, <https://www.lvt.com/blog/organized-retail-crime-methods-and-how-to-prevent-them> (last visited on Feb. 12, 2024).

<sup>32</sup> Brandon Beyer, Rubén Rosario, and Robbin Simmons. *Police: Shattered glass during 'smash and grab' at Sawgrass Mills Mall leads to panic* (Dec. 17, 2023), WSVN 7 News, <https://wsvn.com/news/local/broward/police-shattered-glass-during-smash-and-grab-at-sawgrass-mills-mall-leads-to-panic/> (last visited on Feb. 12, 2024).

<sup>33</sup> Mary Hanbury, *Police say that smash-and-grab robberies at Nordstrom, Louis Vuitton, and Best Buy were organized on social media by groups of people who had never met* (Dec. 14, 2021), Business Insider, <https://www.businessinsider.com/smash-and-grab-robberies-organized-on-social-media-police-2021-12> (last visited on Feb. 12, 2024).

<sup>34</sup> *National Retail Security Survey 2023* (Sep. 26, 2023), NRF, [https://cdn.nrf.com/sites/default/files/2023-09/NRF\\_National\\_Retail\\_Security\\_Survey\\_2023.pdf](https://cdn.nrf.com/sites/default/files/2023-09/NRF_National_Retail_Security_Survey_2023.pdf) (last visited Feb. 12, 2024).

<sup>35</sup> David Montgomery, *'Smash-and-grab' robberies fuel new laws, but critics question the need* (Dec. 19, 2023), Stateline, <https://stateline.org/2023/12/19/smash-and-grab-robberies-fuel-new-laws-but-critics-question-the-need/> (last visited Feb. 12, 2024).

<sup>36</sup> In 2019, CS/HB 7125 amended s. 812.015, F.S., and increased the aggregation period from 48 hours to 30 days. Ch. 2019-167, Laws of Fla.

- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the property stolen;<sup>37</sup>
- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which 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.

Under s. 812.015(8)(f), F.S., retail theft is a third degree felony, regardless of the value of property stolen, if a person:

- Individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.<sup>38</sup>

Under s. 812.015(9)(a)-(c), F.S., retail theft is a second degree felony if a person:

- Commits a second or subsequent felony retail theft offense;
- 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, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000;<sup>39</sup> or
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.<sup>40</sup>

Under s. 812.015(9)(d), F.S., retail theft is a second degree felony, regardless of the value of property stolen, if a person:

- Individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.<sup>41</sup>

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<sup>37</sup> S. 812.015(8)(b), F.S., is ranked as a Level 3 offense on the OSRC. Ss. 812.015(8)(a), (c), (d), and (e) are unlisted third degree felonies and are thus each ranked as a Level 1 offense on the OSRC.

<sup>38</sup> S. 812.015(8)(f), F.S., is ranked as a Level 5 offense on the OSRC.

<sup>39</sup> Ss. 812.015(9)(a)-(b), F.S., are each ranked as a Level 6 offense on the OSRC.

<sup>40</sup> S. 812.015(9)(c), F.S., is an unlisted second degree felony and thus ranked as a Level 4 offense on the OSRC.

<sup>41</sup> S. 812.015(9)(d), F.S., is ranked as a Level 6 offense on the OSRC.

## Effect of Proposed Changes – Retail Theft

CS/HB 549 amends s. 812.015, F.S., to create two new retail theft offenses, prohibiting a person from:

- Acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense, punishable as a third degree felony.
- Acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense and, in the course of organizing or committing the offense, soliciting the participation of another person in the offense through the use of a social media platform, as defined in s. 501.2041(1), F.S.,<sup>42</sup> punishable as a second degree felony.

Under the bill, these two new retail theft offenses may apply regardless of the value of property stolen.

The bill also creates new enhanced retail theft offenses, each punishable as a first degree felony, if a person commits retail theft under ss. 812.015(8) or (9), F.S., and:

- Has two or more previous convictions of violations of either or both of those subsections; or
- Possesses a firearm during the commission of such offense.<sup>43</sup>

Additionally, the bill amends the aggregation criteria for specified retail theft offenses as follows:

- For retail theft offenses under ss. 812.015(8), 812.015(9), and 812.015(10), F.S., where a specified number of retail thefts or a specified value of property stolen is aggregated to determine the total number of retail thefts or value of property stolen, the bill increases the aggregation period from 30 days to 365 days.
- For retail theft offenses under ss. 812.015(8)(f) and 812.015(9)(d), F.S., that occur during a specified time period, at a specified number of locations, involving a specified number of items of merchandise, the bill decreases the aggregate number of retail thefts required to prove a violation from *five* retail thefts to *three* retail thefts.

The bill requires a court to order a person convicted of committing retail theft to pay restitution, which must include the value of merchandise that was damaged or stolen and the cost of repairing or replacing any other property that was damaged in the course of committing the offense.

The bill provides an effective date of October 1, 2024.

### B. SECTION DIRECTORY:

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

**Section 2:** 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 3:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 4:** Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers and other specified personnel; reclassification of offenses; minimum sentences.

**Section 5:** Provides an effective date of October 1, 2024.

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<sup>42</sup> Section 501.2041(1)(g), F.S., defines "social media platform" as any information service, system, Internet search engine, or access software provider that 1) provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site; 2) operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity; 3) does business in the state; and 4) satisfies at least one of the following thresholds: (a) has annual gross revenues in excess of \$100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index, or (b) has at least 100 million monthly individual platform participants globally.

<sup>43</sup> Under the bill, committing retail theft and having two or more convictions under ss. 812.015(8) or (9), F.S., is unlisted as thus ranked as a Level 7 offense on the OSRC. The bill ranks committing retail theft and possessing a firearm during the commission of the offense as a Level 8 offense on the OSRC.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

The bill may have a positive impact on merchants who lose money from organized retail theft, to the extent that the requirements of the bill may result in more orders of restitution or orders of restitution in greater amounts. Restitution generally must be ordered in theft cases under current law, and the impact of the bill's changes on the frequency or value of restitution orders is indeterminate.

### D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by decreasing thresholds for specified retail and residential theft offenses, enhancing penalties for specified offenses, and creating new misdemeanor and felony offenses, which may result in more jail and prison admissions or longer sentences for convicted offenders.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Amended s. 812.014, F.S, to create the following theft from a dwelling or the unenclosed curtilage of a dwelling offenses:
  - A second degree felony if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof.
  - A third degree felony if the property stolen is valued at \$40 or more, but less than \$750, or is valued at \$750 or more.
  - A first degree misdemeanor if the property stolen is valued at less than \$40, which may be enhanced to a third degree felony if the person has one or more prior theft convictions.
- Further amended s. 812.015, F.S., to:
  - Create a first degree felony if a person violates ss. 812.015(8) or (9), F.S., and has two or more previous convictions of violations of either or both of those subsections or possesses a firearm during the commission of the offense.
  - Increase the aggregation periods under ss. 812.015(8), (9), and (10), F.S., from 30 days to 365 days, when determining the total number of thefts a person commits or the total value of merchandise a person steals for specified retail theft offenses.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.