

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 6037 Traveling Across County Lines to Commit a Burglary

**SPONSOR(S):** Snyder

**TIED BILLS:** IDEN./SIM. BILLS: SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 4 N	Frost	Hall
2) Judiciary Committee		Frost	Kramer

**SUMMARY ANALYSIS**

A burglary is a felony offense classified according to the specific circumstances of the offense. A person commits burglary by:

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are open to the public or the person’s entry is licensed or invited; or
- 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  - After permission to remain is withdrawn, with the intent to commit an offense therein; or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.

Under s. 843.22, F.S., a burglary offense may be reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart (OSRC) when the person committing the burglary travels:

- Any distance with the intent to commit the burglary in a county that is not his or her county of residence; and
- For the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

A person whose burglary offense is reclassified under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.

Because current law requires proof that an offender traveled with the intent to commit a burglary in a county that is not his or her county of residence *and* that the purpose of his or her travel was to thwart law enforcement attempts to track stolen items, law enforcement and prosecutors may currently experience difficulty applying the enhancement.

HB 6037 removes the requirement under s. 843.22, F.S., that an offender’s travel be for the purpose of thwarting law enforcement attempts to track the items stolen during a burglary. By removing this requirement, the bill may allow more burglary offenses to be subject to enhanced penalties, and more offenders to be held without bail pending a first appearance hearing, when the offender travels with the intent to commit a burglary in a county that is not his or her county of residence.

The bill may have a positive indeterminate impact on the number of prison and jail beds by removing an element required to be proved for an offender to be subject to the penalty enhancement for traveling across county lines with intent to commit a burglary.

The bill provides an effective date of October 1, 2022.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

#### Burglary

A person commits burglary by:<sup>1</sup>

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are at the time open to the public or the person’s entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
  - Surreptitiously, with the intent to commit an offense therein;
  - After permission to remain is withdrawn, with the intent to commit an offense therein; or
  - To commit or attempt to commit a forcible felony.<sup>2</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>3</sup>
- A burglary of a dwelling, an occupied structure or conveyance, or an authorized emergency vehicle is a second degree felony.<sup>4</sup>
- A burglary is a first degree felony when an offender:<sup>5</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:
    - 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:

- “Structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof;<sup>6</sup>
- “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>7</sup> and
- “Conveyance” includes any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.<sup>8</sup>

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<sup>1</sup> S. 810.02, F.S.

<sup>2</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>3</sup> S. 810.02(4), F.S.

<sup>4</sup> S. 810.02(3), F.S.

<sup>5</sup> S. 810.02(2), F.S.

<sup>6</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>7</sup> However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof. S. 810.011(1), F.S.

<sup>8</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.

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

In 2014, in response to an increase in burglaries committed by individuals intentionally traveling to a county in which they did not reside with the intent to commit the offense, the Legislature created a reclassification for traveling across county lines with intent to commit a burglary.<sup>9</sup> Under s. 843.22, F.S., a burglary offense is reclassified one degree higher and re-ranked one level above the ranking specified in the offense severity ranking chart when the offender committing the burglary travels:

- Any distance with the intent to commit the burglary in a county that is not his or her county of residence; and
- For the purpose of thwarting law enforcement attempts to track items stolen in the burglary.

A person's "county of residence" means the county in which he or she resides within Florida, and evidence of a person's county of residence may include, but is not limited to:

- The address on the person's driver license or state identification card;
- Records of real property or mobile home ownership;
- Records of a lease agreement for residential property;
- The county in which the person's motor vehicle is registered;
- The county in which the person is enrolled in an educational institution; and
- The county in which the person is employed.<sup>10</sup>

A person whose burglary offense is reclassified under s. 843.22, F.S., cannot be released on bail until he or she appears for a first appearance hearing and a court determines bond.<sup>11</sup>

While s. 843.22, F.S., was intended to discourage individuals from crossing county lines with the intent to commit burglaries and to enhance penalties for those that do, the Florida Department of Law Enforcement's Computerized Criminal History Data indicates that from January 1, 2014, through October 2021,<sup>12</sup> only one arrest charging a violation was made and no person has been prosecuted for a burglary offense enhanced under s. 843.22, F.S.<sup>13, 14</sup> Because current law requires proof that an offender traveled with the intent to commit a burglary in a county that is not his or her county of residence *and* that the purpose of his or her travel was to thwart law enforcement attempts to track stolen items, law enforcement and prosecutors may currently experience difficulty applying the enhancement.

### Criminal Punishment Code – Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code<sup>15</sup> are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (level 1) to most severe (level 10). Each felony offense is assigned to a level according to the severity of the offense.<sup>16</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>17</sup> A person may also accumulate points for

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<sup>9</sup> Ch. 2014-201, Laws of Fla.; S. 843.22, F.S.; See also Sascha Corder, *Sheriff Enlists Legislative Help To Crack Down On Growing Problem: 'Pillowcase Burglars'*, WFSU, (Dec. 18, 2013) <https://news.wfsu.org/state-news/2013-12-18/sheriff-enlists-legislative-help-to-crack-down-on-growing-problem-pillowcase-burglars> (last visited Jan. 6, 2022).

<sup>10</sup> S. 843.22(1)(a), F.S.

<sup>11</sup> S. 903.046(2)(l), F.S.

<sup>12</sup> Email from Bobbie Smith, Legislative Analyst, Florida Department of Law Enforcement, RE: Crime Stats for s. 843.22 (Oct. 12, 2021).

<sup>13</sup> However, Florida Statute is an optional field in the arrest data; as such, 11.64% of arrests in the CCH data for the time period reported do not include a statutory reference. Email from Bobbie Smith, Legislative Analyst, Florida Department of Law Enforcement, RE: Crime Stats for s. 843.22 (Feb. 19, 2021).

<sup>14</sup> While an offender may be charged with a particular offense or enhancement by a law enforcement officer at the time of his or her arrest, the prosecutor has the discretion to determine which offenses or enhancements with which to formally charge a person, based on his or her assessment of the evidence and consideration of whether or not certain charges or enhancements can be proven to a jury beyond a reasonable doubt.

<sup>15</sup> All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

<sup>16</sup> S. 921.0022(2), F.S.

<sup>17</sup> Ss. 921.0022 and 921.0024, F.S.

factors such as victim injury, violating a community sanction, and certain sentencing multipliers.<sup>18</sup> The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.<sup>19</sup>

### **Effect of Proposed Changes**

HB 6037 amends s. 843.22, F.S., to remove the requirement that an offender's travel be for the purpose of thwarting law enforcement attempts to track the items stolen during a burglary for the enhanced penalty to apply.

Under the bill, a burglary offense is reclassified and re-ranked one level above the ranking specified in the OSRC when a person travels any distance to a county that is not his or her county of residence with the intent to commit a burglary, and he or she may not be released on bail until a court determines bond at a first appearance hearing.

By removing the requirement that an offender's travel be for the purpose of thwarting law enforcement attempts to track the stolen items, the bill may allow more burglary offenses to be subject to enhanced penalties, and more offenders to be held without bail pending a first appearance hearing, when the offender travels with the intent to commit a burglary in a county that is not his or her county of residence.

The bill provides an effective date of October 1, 2022.

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

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

**Section 2:** Provides an effective date of October 1, 2022.

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

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

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on the number of prison beds by removing an element required to be proved for an offender to be subject to the penalty enhancement for traveling across county lines with intent to commit a burglary.

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

1. Revenues:

None.

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<sup>18</sup> S. 921.0024(2), F.S.

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

2. Expenditures:

The bill may have a positive insignificant impact on the number of jail beds by removing an element required to be proved for an offender to be subject to the penalty enhancement for traveling across county lines with intent to commit a burglary, which also requires that an offender be held in jail custody until a first appearance hearing to determine bail.

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. This 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