

CS/HB 7125 – Public Safety

This bill amends s. 212.15, F.S., increasing the maximum threshold stolen revenue values for second degree misdemeanor theft of state funds from under \$300 to under \$1,000. This change to the thresholds would also affect the pool of potential offenders facing a third or subsequent conviction (unranked, 3rd degree felony). For the Level 1, 3rd degree felony, the minimum threshold is increased from \$300 to \$1,000.

Per DOC, in FY 17-18 there was 1 (adj.) offender sentenced for a third or subsequent conviction of a theft of state funds under \$300, with no offenders sentenced to prison. There were 23 (adj.) offenders sentenced for the theft of state funds \$300 or more, but less than \$20,000, with 1 (adj.) offender sentenced to prison (sentence length=12.0 m, incarceration rate: 4.4% adj-4.8% unadj). The number of offenders that currently fall within the proposed changes to the thresholds cannot be differentiated from the current thresholds.

CONFERENCE ADOPTED ESTIMATE: **Negative Insignificant**

This bill amends s. 489.126, F.S., restructuring what constitutes construction contracting offenses and creating multiple felonies for the following offenses:

(For not applying for permits necessary with 30 days after “initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property” or starting work “within 90 days after the date all necessary permits for work, if any, are issued”)

- Total money received is less than \$1,000 – 1st degree misdemeanor
- Total money received is at least \$1,000, but less than \$20,000 – unranked, 3rd degree felony (Level 1 by default)
- Total money received is at least \$20,000, but less than \$200,000 – unranked, 2nd degree felony (Level 4 by default)
- Total money received is \$200,000 or more – unranked, 1st degree felony (Level 7 by default)

(For receiving “money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed” for any 90-day period”)

- Total money received exceeding the value of work performed is less than \$1,000 – 1st degree misdemeanor
- Total money received exceeding the value of work performed is at least \$1,000, but less than \$20,000 – unranked, 3rd degree felony (Level 1 by default)
- Total money received exceeding the value of work performed is at least \$20,000, but less than \$200,000 – unranked, 2nd degree felony (Level 4 by default)

- Total money received exceeding the value of work performed is \$200,000 or more – unranked, 1st degree felony (Level 7 by default)

Under current law, such acts would be punished as theft under s. 812.014, F.S. and its associated thresholds. While this bill notes that these violations would be prosecuted as they are under that statute, the newly created felony would apply.

This bill also adds that required intent “to prove a criminal violation may be shown to exist at the time that the contractor appropriated the money to his or her own use and is not required to be proven to exist at the time of the taking of the money from the owner or at the time the owner makes a payment to the contractor.” Furthermore, “it may be inferred that a contractor intended to deprive the owner of the right to the money owed, or deprive the owner of the benefit from it, and inferred that the contractor appropriated the money for his or her own use, or to a person not entitled to the use of the money, if the contractor fails to refund any portion of the money owed within 30 days after receiving a written demand for such money from the owner.” This language could expand the ability to prosecute such violations.

Per DOC, in FY 17-18 there were 10,351 (adj.) offenders sentenced for the Level 2, 3rd degree felony under s. 812.014, F.S. (\$300 to \$5,000), with 1,131 (adj.) of these offenders sentenced to prison (mean sentence length=25.7 m, incarceration rate: 10.9% adj-10.9% unadj). For the Level 3, 3rd degree felony (\$5,000 to \$10,000), there were 334 (adj.) offenders sentenced, with 33 (adj.) of these offenders sentenced to prison (mean sentence length=25.1 m, incarceration rate: 9.9% adj-9.9% unadj). There were 506 (adj.) offenders sentenced for the Level 4, 3rd degree felony (\$10,000 to \$20,000), with 110 (adj.) of these offenders sentenced to prison (mean sentence length=26.7 m, incarceration rate: 21.7% adj-21.8% unadj). There were 420 (adj.) offenders sentenced for the Level 6, 2nd degree felony (\$20,000 to \$100,000), with 119 (adj.) of these offenders sentenced to prison (mean sentence length=34.7 m, incarceration rate: 28.3% adj-28.3% unadj). Finally, there were 8 (adj.) offenders sentenced for the Level 7, 1st degree felony (\$100,000 or more), with 4 (adj.) of these offenders sentenced to prison (mean sentence length=155.8 m, incarceration rate: 50.0% adj-57.1% unadj). It is not known how many of these offenses were committed by contractors.

In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%. The incarceration rate for an unranked, 2nd degree felony was 31.7%. The incarceration rate for an unranked, 1st degree felony was 73.7%.

While it is not known how many theft offenses were committed by contractors, this bill’s inclusion of higher monetary thresholds and lower felony levels could lower incarceration rates for future offenders. However, elaborating on what constitutes intent could now make it easier to prosecute such offenses.

CONFERENCE ADOPTED ESTIMATE: Positive/Negative Indeterminate

This bill also amends s. 500.451, F.S., removing the minimum mandatory period of incarceration of 1 year for the unranked, 3rd degree felony for selling, transporting, distributing, purchasing, or possessing horse meat for human consumption that is not clearly stamped.

Per DOC, in FY 17-18, nobody was sentenced for horse meat offenses.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 509.151, F.S., adjusting the second degree misdemeanor and third degree felony thresholds for obtaining food or lodging with intent to defraud, increasing the minimum threshold value for the Level 1, 3rd degree felony from \$300 to \$1,000.

Per DOC, in FY 17-18, there were 23 (adj.) offenders sentenced for obtaining food or lodging with intent to defraud for \$300 or more, with no offenders sentenced to prison.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 562.27, F.S., reducing the penalty for possessing a still or still apparatus from a Level 1, 3rd degree felony to a **2nd degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for possessing a still or still apparatus.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 562.451, F.S., reducing the penalty for owning or possessing “1 gallon or more of liquor...which was not made or manufactured in accordance with the laws in effect at the time when and place where the same was made or manufactured” from an unranked, 3rd degree felony to a **1st degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for owning or possessing a gallon or more of illegally made or manufactured liquor.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 775.082, F.S., expanding the pool of offenders eligible for a mandatory minimum sentence for a “prison releasee reoffender” by adding that they committed one of a list of offenses within three years after being released from “a county detention facility following incarceration for an offense for which the sentence pronounced was a prison sentence.”

Per DOC, in FY 17-18, there were 484 releasee reoffenders admitted to the Florida Department of Corrections. For potential reoffenders impacted by this language, in FY

17-18, there were roughly 570 offenders that were sentenced to time served and released before coming to prison.

While each year following release sees a certain percent of people returning to prison (Year 1: 8%, Year 2: 9%, Year 3: 7%), many of the offenses listed under s. 775.082, F.S. are already receiving extended prison sentences that might not be impacted for many years. At the same time, it is not known how many of the offenders released under time served in jail eventually commit these offenses as reoffenders, nor can it be determined how many of those would receive a prison sentence as a releasee reoffender who would have been given a different sentence prior to this bill (i.e. community supervision). Finally, state attorneys have discretion on whether or not to pursue sentencing under this statute and it is not known how often they choose this form of sentencing for an eligible offender. Due to these factors, the prison impact cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate

This bill also amends s. 817.413, F.S., increasing the minimum threshold value for the Level 3, 3rd degree felony of selling used motor vehicle goods as new from greater than \$100 to \$1,000 or more.

Per DOC, in FY 17-18, nobody was sentenced for selling used motor vehicle goods as new for greater than \$100.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 847.011, F.S., adding that “a person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll.” A definition for an obscene, child-like sex doll is not provided. Such an act would be an **unranked, 3rd degree felony**, and become an **unranked, 2nd degree felony** if a person is convicted a second or subsequent time. A 1st degree misdemeanor is created for “a person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll”, which becomes an **unranked, 3rd degree felony** for a second or subsequent conviction.

Per DOC, in FY 17-18, 10 (adj.) people were sentenced under s. 847.011, F.S., with nobody receiving a prison sentence. In FY 17-18, the incarceration rate for an unranked, 3rd degree felony was 8.7%. The incarceration rate for an unranked, 2nd degree felony was 31.7%.

CONFERENCE ADOPTED ESTIMATE: Positive Insignificant

This bill also amends s. 849.01, F.S., reducing the penalty for keeping a gambling house from a Level 1, 3rd degree felony to a **2nd degree misdemeanor**.

Per DOC, in FY 17-18, nobody was sentenced for keeping a gambling house.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 893.135(1)(c)2, F.S., reducing the thresholds for trafficking in hydrocodone:

- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 50 grams or more, less than 100 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 100 grams or more, less than 300 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 300 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law:

- 14 grams or more, less than 28 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 50 grams or more, less than 200 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 200 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Per DOC, in FY 17-18, there were 18 (adj.) offenders sentenced for trafficking in hydrocodone 14 grams or more, but less than 28 grams, with 16 (adj.) offenders sentenced to prison (mean sentence length=40.9 m, incarceration rate: 88.9% adj-88.2% unadj). There were 5 (adj.) offenders sentenced for trafficking in hydrocodone 28 grams or more, but less than 50 grams, with 4 (adj.) offenders sentenced to prison (mean sentence length=93.0 m, incarceration rate: 80.0% adj-80.0% unadj). There were 2 (adj.) offenders sentenced for trafficking in hydrocodone 50 grams or more, but less than 200 grams, with 2 (adj.) offenders sentenced to prison (mean sentence length=60.0 m, incarceration rate: 100%). There was 1 (adj.) offender sentenced for trafficking in hydrocodone 200 grams or more, but less than 30 kilograms, with no offenders receiving a prison sentence.

Currently, if the weight is below 14 grams of hydrocodone, an offender would be subject to the penalties under possession or sale, manufacture, and delivery (s. 893.13, F.S.). By removing 14 grams or more, but less than 28 grams from the trafficking statute, anything less than 28 grams would now be subject to those penalties. However,

hydrocodone offenses are not differentiated for s. 893.13, F.S. They are part of the general possession or sale/manufacture/delivery of other Schedule I and II substances. Per DOC, in FY 17-18, there were 12,825 (adj.) offenders sentenced for possession of other Schedule I and II substances, with 965 (adj.) offenders sentenced to prison (mean sentence length=21.5 m, incarceration rate: 7.5% adj-7.5% unadj). Per DOC, in FY 17-18, there were 1,412 (adj.) offenders sentenced for sale/manufacture/delivery of other Schedule I and II substances, with 569 (adj.) offenders sentenced to prison (mean sentence length=32.3 m, incarceration rate: 40.3% adj-40.3% unadj). It is not known if incarceration rates and sentence length for hydrocodone is treated differently than other substances captured in this data, but an examination of overlaps in sentence points did show scenarios where similar point totals scored both higher and lower sentences when comparing possession or sale/manufacture/delivery other Schedule I and II drugs to trafficking in hydrocodone. However, even if only the lower sentence length was applied to comparable hydrocodone trafficking offenses, there would be an insufficient number of offenders to reach significance.

CONFERENCE ADOPTED ESTIMATE: Negative Insignificant

This bill also amends s. 948.08, F.S., expanding eligibility for the pretrial substance abuse and education intervention program, allowing people with two or fewer prior nonviolent felony convictions to also be eligible for voluntary admission; however, it gives the court discretion to deny them. Originally, one could not have had a prior felony conviction. Additionally, this bill expands eligibility for the pretrial veterans' treatment intervention program, adding "an individual who is a current or former United States Department of Defense contractor; or an individual who is a current or former military member of a foreign allied country."

Per DOC, in FY 17-18, there were 8,377 offenders admitted to pretrial intervention, with 148 of these offenders admitted for veterans' treatment intervention. It is not known how many more eligible offenders there would be under this new language, so the number of offenders diverted from prison cannot be quantified.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL: Negative Significant

Requested by: House