

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 4, 1998 Revised: _____

Subject: Trespass

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for SB 786 augments the trespass statute by creating a third degree felony if an offender commits the offense of trespass and also commits an assault or battery while trespassing.

This CS would substantially amend the following section of the Florida Statutes: 810.08.

II. Present Situation:

A. Burglary.

"Burglary" means entering or remaining in a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain. §810.02 (1), Florida Statutes. "Structure" is defined as "a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof." "Dwelling" is defined as "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." §810.011(1) and (2), Florida Statutes.

Burglary is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment or as provided in §775.082, §775.083, or §775.084, Florida Statutes, *if*, in the course of committing the offense, the offender:

- (a) Makes an assault or battery upon any person; *or*

- (b) Is or becomes armed within the dwelling, structure, or conveyance, with explosives or a dangerous weapon; *or*
- (c) Enters an occupied or unoccupied dwelling or structure, *and*:
 - 1. Uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damages the dwelling or structure; *or*
 - 2. Causes damage to the dwelling or structure, or to property within the dwelling or structure, in excess of \$1,000. §810.02 (2), Florida Statutes.

Burglary is a felony of the second degree, punishable as provided in §775.082, §775.083, or §775.084, Florida Statutes, *if*, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

- (a) Dwelling, and there is another person in the dwelling at the time the offender enters or remains;
- (b) Dwelling, and there is not another person in the dwelling at the time the offender enters or remains;
- (c) Structure, and there is another person in the structure at the time the offender enters or remains; *or*
- (d) Conveyance, and there is another person in the conveyance at the time the offender enters or remains. §810.02 (3), Florida Statutes.

Burglary is a felony of the third degree, punishable as provided in §775.082, §775.083, or §775.084, Florida Statutes, *if*, in the course of committing the offense, the offender does not make an assault or battery and is not and does not become armed with a dangerous weapon or explosive, and the offender enters or remains in a:

- (a) Structure, and there is not another person in the structure at the time the offender enters or remains; *or*
- (b) Conveyance, and there is not another person in the conveyance at the time the offender enters or remains. §810.02 (4), Florida Statutes.

The 1996 Legislature amended the burglary, trespass, and theft statutes. *See*, §§ 47- 49, Ch. 96-388, *Laws of Fla.* These changes include the following:

- ▶ Redefining “dwelling” to include “any attached porch”;

- ▶ Defining trespass to include an uninvited entry when “the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon...”;
- ▶ Defining the term “unenclosed curtilage,” for purposes of the trespass statute to mean “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”;
- ▶ Creating a new offense of “grand theft of the third degree and a felony of the third degree” if an intruder enters the dwelling or the unenclosed curtilage surrounding a dwelling and steals property valued at \$100 - \$300; and
- ▶ Creating a new offense of a “petit theft of the first degree and a misdemeanor of the first degree” if, without entering a dwelling, an offender steals property valued at \$100 - \$300.

For a person to commit a burglary, a person must enter the dwelling or the conveyance with “an intent to commit an offense therein.” §810.02(1), Florida Statutes. The term “offense” means *any criminal offense*. Beyond an allegation and the proof of unauthorized entry or remaining in a structure or conveyance, an essential element that must be alleged and proven for the charge of burglary is *intent to commit an offense*, not intent to commit a specified offense. *Toole v. State*, 472 So.2d 1174 (1985) (disapproving *Bennett v. State*, 438 So.2d 1034).

The offense that the offender intends to commit while in or on the property does not have to be actually completed or successful in order to successfully charge and prosecute an offender for burglary. All that needs to be proven beyond a reasonable doubt is that the offender *intended* to commit a criminal offense when he or she entered the property. For instance, it was sufficient to convict an offender of burglary where the defendant had fully formed intent to commit the offense of criminal mischief at time of entry into the building, and it was not required that the defendant committed the completed offense of criminal mischief. *Miranda v. State*, 648 So.2d 174 (3d DCA 1994), *review denied* 659 So.2d 272.

The way that an offender’s intent to commit an offense in the structure or conveyance is proven by the prosecution is by providing evidence that the offender actually committed or attempted to commit an offense while in the property. The definition of burglary under §810.02, Florida Statutes, as entering or remaining in the structure with the intent to commit any offense requires specific intent which the state must allege and prove but, because the state rarely has direct proof as to the accused's exact objectives, motives and intentions, the state's proof is almost always circumstantial. *Ellis v. State*, 425 So.2d 201 (5th DCA 1983), *app’vd* 442 So.2d 213. For instance, in the *Golden* case, the state proved the defendant’s intent by circumstantial evidence. In that case, the court found that the defendant's intent to commit theft once inside the vehicle, and his subsequent conviction for attempted burglary of a conveyance, was supported by evidence

that he attempted a “stealthy entry” into the vehicle with the use of a clothes hanger, that he did not have permission to enter the vehicle, and that the owner's purse was inside the vehicle. *Golden v. State*, 497 So.2d 914 (3d DCA 1986).

The use of circumstantial evidence and what a reasonable person would believe and be in fear of is also used in the enhancement of burglary to a first-degree felony when assault or battery of a victim inside is involved. The *Croft* Court upheld a conviction for enhanced burglary (burglary with intent to commit assault) where there was evidence that the defendant, after indicating to the victims that he intended to accomplish his threats by getting something from his truck parked outside their home, left the house and shortly afterward reentered it even though it turned out that the defendant had no weapon on his person when he reentered the home. *Croft v. State*, 528 So.2d 1279 (1st DCA 1988).

B. Trespass.

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance. §810.08 (1), Florida Statutes.

An offender commits a first degree misdemeanor when the offender “defies an order to leave, personally communicated to the offender by the owner of the premises or by an *authorized person*.” §810.09 (2) (b), Florida Statutes. (emphasis supplied). In *State v. Dye*, 346 So. 2d 538 (Fla. 1977), the Court held that the term “authorized person” must be “read in light of the preceding phrase, ‘owner of the premises’ and in pari materia with other statutes controlling the delegation of authority to limit or withdraw access to specific types of public land. In regard to private land, an ‘authorized person’ is one who received either express or implied authorization from the owner.” *Id.* at 541-2.

If a person enters the property of conveyance belonging to another person without the owner’s permission, a trespass has been committed. Unless the property or conveyance is occupied or unless the offender is armed with a firearm or other dangerous weapon, trespass in a structure or conveyance is a misdemeanor of the second degree, punishable as provided in §775.082 or §775.083, Florida Statutes. §810.08 (2) (a), Florida Statutes.

If there is a human being in the structure or conveyance at the time the offender trespassed, attempted to trespass, or was in the structure or conveyance, the trespass in a structure or conveyance is a misdemeanor of the first degree, punishable as provided in §775.082 or §775.083, Florida Statutes. *See*, §810.08 (2) (b), Florida Statutes.

If the offender is armed with a firearm or other dangerous weapon, or arms himself or herself with such while in the structure or conveyance, the trespass in a structure or conveyance is a felony of

the third degree, punishable as provided in §775.082, §775.083, or §775.084, Florida Statutes. *See*, §810.08 (2) (c), Florida Statutes.

Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a trespass violation has been or is being committed, and he or she reasonably believes that the person to be taken into custody and detained has committed or is committing such violation. §810.08 (2) (c), Florida Statutes. In the event a person is taken into custody, the law requires the “capturing” person to call a law enforcement officer as soon as is practicable after the person has been taken into custody. The taking into custody and detention by such person, if done in compliance with the requirements of §810.08, Florida Statutes, would not render such person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. *See*, §810.08 (2) (c), Florida Statutes.

III. Effect of Proposed Changes:

Committee Substitute for SB 786 creates a third-degree felony if a person commits a trespass in a structure or conveyance as provided in §810.08 (1), Florida Statutes, and also commits an assault or battery upon any person while in the structure or conveyance. It would apply to offenders’ actions that occur on or after October 1, 1998.

The CS would rank the offense of trespass with an assault or battery as a level 4 offense in the offense severity ranking chart of the Criminal Punishment Code. This would rank the offense created by this CS within the same level as the offense of trespass with a firearm or dangerous weapon, which is also a third-degree felony and in the same statutory paragraph.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not made a formal determination on whether CS/SB 786 would have an impact upon the prison system. Staff predicts that there would be a very insignificant impact, if any, upon Florida's prison system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Instances where this CS would encompass behavior that would not qualify as a burglary would be where a person enters property with the permission of the property owner and a disagreement ensues, the person is ordered to leave and does not, and a physical altercation occurs or verbal threats to do bodily harm with the apparent ability to follow through with the threat occurs. Because it would be difficult to prove that such a person entered the property with the intent to commit an offense therein, or such person initially entered the property with permission of the property owner, the burglary statute would not apply. This change in the trespass statute would "capture" such behavior and make it a third-degree felony.

VIII. Amendments:

None.