



Stuck in the 80s

Time for Reform of Florida's Felony Theft Threshold

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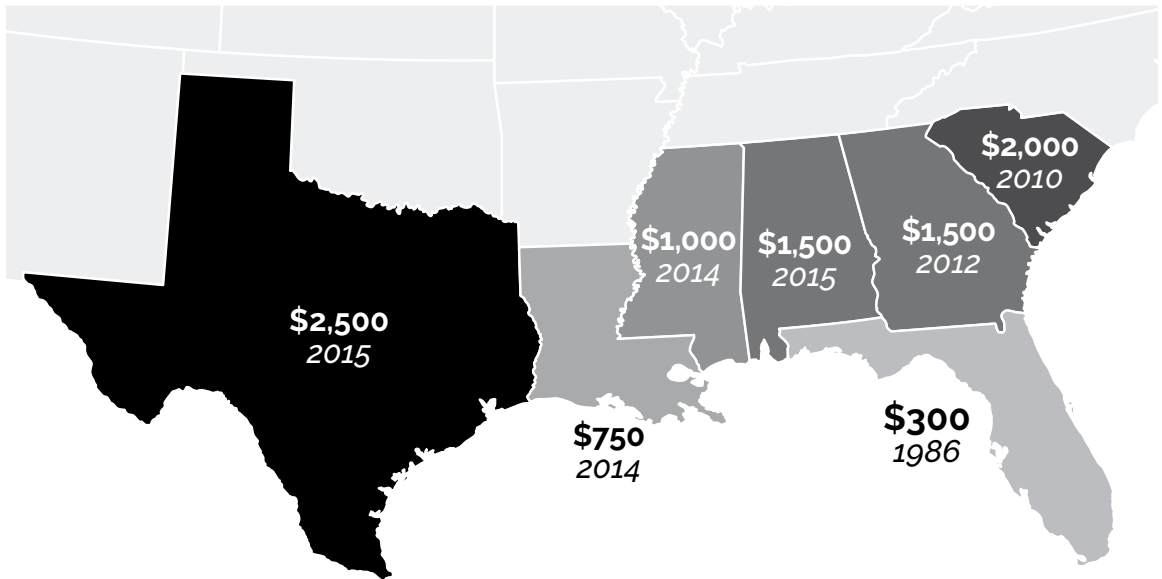
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In 1986, Florida was a very different place than it is today. A gallon of gasoline cost an average of \$0.93, Floridians had just elected Bob Martinez as their governor, and Apple was known to the average American only as a fruit.¹

Today, a gallon of gasoline costs \$2.13, Florida has seen six additional governors since Bob Martinez, and Apple is getting

ready to launch its eighth version of an iPhone—something unimaginable in the 1980's.² Much has changed in the state of Florida since 1986, but unfortunately, its threshold for a first-time felony theft offense has remained stubbornly the same: a mere \$300.³

In recent years, while many states—including all of Florida's neighboring



Source: “The Effects of Changing State Theft Penalties,” The Pew Charitable Trusts. Map created by author.

states—have significantly increased their felony theft thresholds to adjust either for inflation or as a retreat from more punitive punishment for low-level offenders, Florida has remained an outlier. The last time Florida increased its felony theft threshold was with the passage of Senate Bill 83 in 1986, which raised the amount from \$100 to \$300.⁴

The Basics

Florida statutes define theft as an act a person commits if he or she “knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently: a) deprive the other person of a right to the property or a benefit from the property; or b) appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.”⁵

There are varying degrees and types of theft in Florida, each of which carry

different types of punishments. There is petit theft, typically a misdemeanor offense, and grand theft, a felony offense.

Grand theft in the third degree is the lowest level felony grand theft offense. The offense is defined as the theft of property valued at between \$300 and \$20,000, among other things.⁶ In Florida, this offense is a felony in the third degree, which can result in up to five years in prison and up to a \$5,000 fine upon conviction.⁷

There are two other low-level felony theft offenses that can result in prison time in Florida, both involving theft of property valued below the \$300 felony grand theft threshold. These offenses include petit theft as a third offense, and grand theft of a dwelling.

In Florida, petit theft is either a first degree or second degree misdemeanor, depending on the value of the property involved. However, if a person commits any petit theft offense and has previously been

convicted of two or more theft offenses as an adult or juvenile, it is considered a third degree felony, which can result in an up to five-year prison term and \$5,000 fine—the same punishment for felony grand theft.

Theft of property valued at a minimum of \$100 and \$300 is also considered felony grand theft in the third degree if the property was taken from a “dwelling” or the “unenclosed curtilage of a dwelling,” which, according to Florida law, means “the enclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and [...] used in connection with that dwelling.”⁸ As a practical example, a person who steals property valued at \$100 while they’re attending a party at someone’s home can be charged with felony grand theft of a dwelling.

Inmates Incarcerated for Low-Level Theft Offenses:

While one may think that prison sentences for individuals who are convicted of the lowest level theft offenses is an anomaly in Florida, unfortunately the opposite is true. As of November 2016, 1,890 inmates were incarcerated for one or more low-level felony theft offenses.⁹

The majority, or 1,327 inmates, were

incarcerated for a grand theft in the third degree offense (\$300 threshold), while 758 were serving sentences for a petit theft as a third offense (less than \$100 threshold). Finally, 45 inmates were serving a sentence for a third degree grand theft of a dwelling

offense where the value was between \$100 and \$300. These figures overlap, as some inmates were serving sentences for multiple theft offenses.¹⁰

It is routine for individuals convicted of low-level theft offenses involving theft of property valued at much less than \$100 to receive lengthy prison terms.

For example, Latasha Wingster was convicted of petit theft as a third offense, and was sentenced to two years in prison. Her offense? She walked out of Wal-Mart without paying for a twelve-pack of Seagram’s wine coolers, which was valued at less than

\$15. Because she had been convicted of petty theft on two previous occasions, this crime became a felony offense that carried 5-years maximum in prison, and up to a \$5,000 fine. Despite having a low criminal sentencing point score that otherwise would require community supervision over incarceration, and despite noting that her three children would have to enter into the foster care system if she was incarcerated,



the only deal the state offered was a two-year prison sentence, which she is currently still serving.¹²

While it's important for Latasha to be held accountable for her actions, a two-year prison term seems disproportionate for the crime committed when alternative sanctions are available. If the threshold for felony theft charges were higher, taxpayers would not be paying for her incarceration and her children arguably would not be in the foster care system today.

Cost of Incarceration per day

It costs taxpayers substantially to incarcerate low-level theft offenders. With the average cost of incarcerating each inmate per day at \$51.65 in FY 2015, taxpayers are footing a bill of \$97,600 each day these 1,890 inmates are held in a Florida Department of Corrections facility. This amounts to roughly \$35.6 million per year.¹²

Adjusting for Inflation

While individuals who commit these types of offenses should not be let off the hook – after all, theft is not a victimless crime – it's important to remember that \$300 in 1986 was worth more than \$300 today. When adjusting for inflation, \$300 in 1986 has the same buying power as roughly \$661 in 2016.¹³ If legislators believed that theft of property or money valued at \$300 in 1986 was what should constitute a felony over a misdemeanor offense, then it should

at least have been adjusted for inflation over time. Instead, the figure has remained persistent over the past 30 years, which in theory means that lower-level offenders are being punished more harshly today than they were in earlier years.

Reform in Other States

Florida has not only failed to increase its felony theft threshold over the past 30 years, but it has lagged behind the rest of the country in re-thinking the way it punishes low-level offenders.

Over the past 15 years, at least 30 states have raised their felony theft threshold, with three states—Alabama, Colorado, and Mississippi—having raised it twice.¹⁴

In 2010, South Carolina raised its felony theft threshold from \$1,000 to \$2,000. Georgia followed in 2012 when it raised its felony theft threshold from \$500 to \$1,500. In 2014, Louisiana raised its felony theft threshold from \$500 to a modest \$750. That same year, Mississippi raised its threshold for the second time in 11 years, from \$500 to \$1,000. In 2003, the state raised its threshold from \$250 to \$500. Finally,

in 2015, both Alabama and Texas raised its felony theft threshold, respectively. Texas increased its threshold from \$1,500 to \$2,500, the highest threshold of the states listed here. Alabama increased its felony threshold from \$500 to \$1,500.¹⁵

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Increasing Theft Thresholds and Crime

One may believe that increasing felony theft rates will mean that criminals will be emboldened to steal more to skirt the new threshold. That, however, is not what Florida's neighboring states have seen. Over the past 10 years, none of Florida's neighboring states saw increases in their larceny-theft rates. In fact, the majority of these states saw a larger percentage decrease in its larceny-theft rate as compared to Florida, with Mississippi and Louisiana being the exceptions.¹⁶

Of these states, the one with the highest felony theft threshold, Texas, saw the largest percentage decrease in its larceny-theft rate between 2005 and 2015 – 31.5 percent. South Carolina, with the second highest threshold of the states listed, saw its larceny-theft rate decrease by 27 percent between 2005 and 2015. Florida, conversely, saw its larceny-theft rate decrease by 22 percent between 2005 and 2015.¹⁷

Of course, many of these states increased their felony theft rates within the past couple of years, so it's still possible that rates of theft may increase (or not) over time. It's difficult to predict. However, it's important to emphasize that all of these states had higher felony theft thresholds than Florida even prior to increasing them in recent years.

While the causes of varying crime rates, and specifically larceny/theft, are difficult to pinpoint, it is safe to suggest that the decrease in Florida's larceny-theft rate over the past 10 years cannot be solely attributed to its low felony theft threshold, as states that both had higher felony theft thresholds and increased them further all saw similar



or even larger percentage decreases in these crimes over the past ten years as well.¹⁸

One may conclude, then, that it is possible to have both significantly higher felony theft thresholds than Florida's \$300 level and reduce rates of larceny-theft simultaneously.

Conclusion

Florida's felony grand theft threshold—set at a low \$300—is 30 years old, and petit theft as a third offense has no monetary threshold whatsoever needed to be considered a felony offense. While the majority of other states, including all of its

neighbors, have begun to re-think punitive sentences for low-level offenders and have significantly increased their felony theft thresholds, Florida has remained steadfast in keeping things as they were in the 1980's.

As Florida's neighboring states have shown, it is possible to have higher felony theft thresholds and reductions in larceny-theft offenses simultaneously over time. It is not only possible for Florida to effectively prioritize public safety by increasing its theft threshold, but it would also be more cost-effective for taxpayers. By requiring alternative sanctions, such as restitution and/or community based supervision, Florida can ensure that individuals convicted of low-level theft offenses maintain their ties to their communities and become more productive members

of society while also being fairly punished for their crimes—factors which are proven to reduce recidivism. Prison, on the other hand, ensures that these individuals come out with felony records, difficult employment prospects, and in some cases, as better criminals.

Incarceration should be reserved for high-level and the most dangerous offenders—not necessarily individuals who commit low-level crimes. Again, while criminals should always be held accountable for their actions, Florida should look to the success its neighboring states have had with higher felony theft thresholds in order to form better policy for Floridians state wide. It's time for the Sunshine State to get smarter on crime.

1. Average price of gasoline for the months of January through December, 1986. Calculated using average monthly prices provided by the Bureau of Labor Statistics. <https://data.bls.gov/timeseries/APU000074714>
2. Average price of gasoline for the months of January through November, 2016. Calculated using averages provided by the Bureau of Labor Statistics. <https://data.bls.gov/timeseries/APU000074714>
3. Florida 2016 Statutes 812.014(2)(c). http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0812/Sections/0812.014.html
4. Florida Legislature Summary of General Legislation 1986. P. 354-355. <http://fall.fsulawrc.com/collection/FLSumGenLeg/FLSumGenLeg1986.pdf>
5. Florida 2016 Statutes 812.014(1). http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0812/Sections/0812.014.html
6. Florida 2016 Statutes 812.014(2)(c). http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0812/Sections/0812.014.html
7. Florida 2016 Statutes 775.082(3)(e) http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html; Florida 2016 Statutes 775.083(1)(c) http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html
8. Florida 2016 Statutes 812.014(2)(d). http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0812/Sections/0812.014.html
9. Analysis of data provided by the Florida Department of Corrections to the author on November 26, 2016.
10. Ibid.
11. 2016-CF-000278-A-O : STATE OF FLORIDA - VS - WINGSTER, LATASHA MONIQUE.
12. "Inmate Cost Per Day Over Five Years (For all department facilities, excluding private prisons)," Budget Summary FY 2014-15. 2014-2015 Agency Statistics, Florida Department of Corrections. <http://www.dc.state.fl.us/pub/annual/1415/budget.html>
13. Figure calculated with the Bureau of Labor Statistics Consumer Price Index Inflation Calculator. https://www.bls.gov/data/inflation_calculator.htm
14. "The Effects of Changing State Theft Penalties," The Pew Charitable Trusts. February 2016. http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf
15. Ibid.
16. Mississippi saw a 10.6% reduction in its larceny-theft rate between 2005 and 2015; Louisiana saw a 4.4% reduction in its larceny-theft rate between 2005 and 2015;
17. Calculations done by author. Source of larceny-theft rates per 100,000 citizens: "Crime in the United States by Region, Geographic Division, and State, 2004-2005," Crime in the United States, 2005. Federal Bureau of Investigation, U.S. Department of Justice. https://www2.fbi.gov/ucr/05cius/data/table_04.html; "Crime in the United States by Region, Geographic Division, and State, 2014-2015," Crime in the United States, 2015. Federal Bureau of Investigation, U.S. Department of Justice
18. "The Effects of Changing State Theft Penalties," The Pew Charitable Trusts. February 2016. http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf