

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Contraband in County Detention Facilities

SPONSOR(S): Sullivan

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N	Bruno	Sumner
2) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Gusky
3) Judiciary Committee	15 Y, 1 N	Bruno	Poche

SUMMARY ANALYSIS

Florida law prohibits the introduction of contraband into state correctional institutions, county detention facilities, and juvenile detention facilities or commitment programs. Contraband is defined differently for each type of facility.

The only definition of contraband that includes cellular telephones or other portable communication devices pertains to state correctional facilities. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate any phones discovered and discipline inmates on those grounds. However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent.

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system. The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that it would increase the prison population by an unquantifiable amount.

The bill provides an effective date of October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Contraband

Cell phones in state correctional institutions are a pervasive and documented problem, with the Department of Corrections reporting 38,179 cell phones and accessories discovered in its facilities from 2014 to November 2017.¹ Inmates with cell phones can make unrecorded and unmonitored calls to people outside the facility, sometimes for nefarious purposes. Prison cell phone use has been linked to threats, murder, complex criminal schemes, and escapes.² Cell phone use in county detention facilities poses similar risks. Additionally, since many inmates in county detention facilities are awaiting trial, there is a heightened risk that cell phones could be used to intimidate witnesses and obstruct justice.

Florida law prohibits introduction of contraband into state correctional institutions,³ county detention facilities,⁴ and juvenile detention facilities or commitment programs.⁵ Introduction of contraband is either a second or third degree felony,⁶ depending on the type of contraband introduced and the facility.⁷ Contraband, which includes items that may pose a safety concern, is defined differently for each facility. In a state correctional institution, contraband includes:

- Any written or recorded communication or any currency or coin.
- Any article of food or clothing.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.
- Any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.⁸

In a county detention facility, contraband includes:

- Any written or recorded communication.
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products, cigarette, or cigar.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any narcotic, hypnotic, or excitative drug or drug of any kind or nature, including nasal inhalators, sleeping pills, barbiturates, and controlled substances as defined in s. 893.02(4).

¹ Jason Kelly, *9 Investigates: Records show increase in confiscation of cellphones in Florida prisons*, WFTV, (November 2, 2017) available at: <http://www.wftv.com/news/9-investigates/9-investigates-records-show-increase-in-confiscation-of-cellphones-in-florida-prisons/637065013> (last viewed February 12, 2018).

² Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS (September 30, 2017), available at: <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last viewed February 12, 2018); Crimesider Staff, *Indictment: Gang leader ordered hit on baby from jail*, CBS NEWS (May 18, 2016), available at: <https://www.cbsnews.com/news/indictment-gang-member-ordered-hit-on-baby-from-jail/> (last viewed February 12, 2018).

³ S. 944.47, F.S.

⁴ S. 951.22, F.S.

⁵ S. 985.711, F.S.

⁶ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 & 775.083.

⁷ SS. 944.47(2), 951.22(2), & 985.711(2), F.S.

⁸ S. 944.47, F.S.

- Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- Any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.⁹

In a juvenile detention facility or commitment program, contraband includes:

- Any unauthorized article of food or clothing.
- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance, as defined in s. 893.02(3), F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive device.¹⁰

Cellular telephones or other portable electronic devices are only criminalized as contraband in state correctional institutions. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate phones and discipline inmates on those grounds.¹¹ However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.¹²

According to the Florida Department of Law Enforcement's Statistical Analysis Center, there were 2,058 arrest charges for contraband in county jails during FY 2016-17.¹³

Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.¹⁴ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart¹⁵ or by default.¹⁶ Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.¹⁷

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.¹⁸ Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points are added for victim injury, and increase based on the type of injury and severity.¹⁹ Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.²⁰

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total

⁹ S. 951.22, F.S.

¹⁰ S. 985.711, F.S.

¹¹ See, e.g., Florida Sheriffs Association, *Florida Model Jail Standards*, standard no. 14.1, available at:

https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf (last viewed February 12, 2017); Orange County Corrections Department, *Administrative Order No. IO.200 re: Inmate Discipline* (August 30, 2017) (on file with the Judiciary Committee).

¹² Law enforcement may apply for a search warrant to search the contents of a cell phone when the phone constitutes evidence relevant to proving a felony has been committed. S. 933.02, F.S.; *Smallwood v. State*, 113 So.3d 724 (Fla. 2013). As possession of a cell phone in a county detention facility is not currently a felony crime, law enforcement may not obtain a warrant to inspect the contents of a cell phone discovered in a jail unless there is probable cause to connect the phone to another independent crime.

¹³ Email from Ron Draa, External Affairs Director, Department of Law Enforcement, RE: HB 471 - Unmanned Aircraft (January 5, 2018) (copy on file with the Judiciary Committee).

¹⁴ s. 921.002, F.S.

¹⁵ s. 921.0022, F.S.

¹⁶ s. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

¹⁷ s. 921.0024, F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.²¹ Absent mitigation,²² the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.²³

A violation of s. 951.22(1), F.S., introducing or possessing contraband upon the grounds of any county detention facility, is a third degree felony that is listed in Level 6 of the offense severity ranking chart. In FY 2016-17, there were 803 offenders sentenced pursuant to s. 951.22, F.S., with 224 sentenced to prison for an average of 27.8 months.²⁴

Effect of Proposed Changes

HB 733 adds cellular telephones and other portable communication devices to the current definition of contraband in a county detention facility. The bill makes the definition of contraband for county detention facilities similar to the definition of contraband in a state correctional institution, which prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third degree felony, listed in Level 6 of the Criminal Punishment Code offense severity ranking chart.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amending s. 951.22, F.S., relating to county detention facilities; contraband articles.

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

Section 3: Providing an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered this bill on January 29, 2018, and determined that it would increase the prison population by an unquantifiable amount. It is unknown how many persons have introduced or possessed unauthorized cell phones or other communication devices in county detention facilities; therefore, it is unknown how many more offenders may be sentenced to prison with the inclusion of cell phones into the definition of contraband.

²¹ s. 921.0022(2), F.S.

²² The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

²³ s. 921.0022(2), F.S.

²⁴ Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: SB 1886 – Contraband in County Detention Facilities (Similar HB 733), January 29, 2018.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

To the extent that persons are arrested for, charged with, and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state and local governments as these cases are processed through the criminal justice system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES