

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 332

INTRODUCER: Criminal Justice Committee and Senator Pizzo and others

SUBJECT: Incarcerated Women

DATE: February 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 332, which is cited as the “Dignity for Incarcerated Women Act,” creates new statutory language to address how correctional facilities handle certain procedural and administrative circumstances that are unique to the incarceration of women inmates.

Legislation to ensure access to various health care products has been filed in Congress, as well as in a number of states, to address other health care concerns that have been raised by inmates. Additionally, many correctional facility systems, including the Federal Bureau of Prisons, have promulgated new rules to address these policy concerns.

First, the bill requires all correctional facilities, including county detention facilities and the Department of Juvenile Justice (DJJ) facilities, to make “health care products” available to each incarcerated woman. These items must be available in common housing areas and medical care facilities, at no cost, and in a quantity that is appropriate to the needs of the woman. The Department of Corrections (DOC) and DJJ report that many of these policy concerns are contemplated in current rules.

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation. The Federal Prison Rape Elimination Act of 2003 (PREA) was one of the first attempts in recent years to attempt to address concerns raised by these women. The PREA Act provided standards for cross-gender pat-down searches of

female inmates in adult prisons, jails, and community confinement facilities and prohibited such searches absent exigent circumstances.

Additionally, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to do the search;
- Must announce his presence upon entering a housing unit for incarcerated women; and
- With the exception of specified circumstances, must not enter specified areas of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed.

The bill requires male correctional employees to document any incident that violates the above-mentioned provisions within three days. Such documentation must include details of the circumstances that necessitated the employee's actions.

The bill defines several terms to provide clarity to the provisions of the act, including "correctional facility," "correctional facility employee," "health care products," and "state of undress."

To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities. See Section V. Fiscal Impact Statement.

The bill is effective on July 1, 2019.

II. Present Situation:

Over the last several years, various entities throughout the nation have reported about unique challenges that are presented by the incarceration of women and how these circumstances are addressed in correctional facilities across the nation.¹ Many women who have been incarcerated have claimed that access to feminine hygiene products and other hygiene products is inconsistent and sometimes inadequate.²

¹ Vera Institute for Justice, *Overlooked: Women and Jails in an Era of Reform*, August 2016, available at <https://www.vera.org/publications/overlooked-women-and-jails-report> (last visited January 31, 2019); CNN, *Why women in Arizona are sending a state representative pads and tampons*, Amir Vera, February 13, 2018, available at <https://www.cnn.com/2018/02/13/health/women-pads-arizona-state-representative-trnd/index.html> (last visited January 31, 2019); Fox 40, *Movement Focuses on the Mistreatment of Incarcerated Women*, March 10, 2018, available at <https://fox40.com/2018/03/10/movement-focuses-on-the-mistreatment-of-incarcerated-women/> (last visited January 31, 2019); CNN, *The powerful movement for incarcerated women*, Van Jones and Topeka K. Sam, March 10, 2018, available at <https://www.cnn.com/2018/03/09/opinions/justice-for-female-prisoners-jones-sam-opinion/index.html> (last visited January 31, 2019); *The Baltimore Sun*, *Female prisoners deserve dignity*, Nila Bala, June 18, 2018, available at <https://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0619-prisoner-dignity-20180618-story.html> (last visited January 31, 2019); and *The New York Times*, *In Jail, Pads and Tampons as Bargaining Chips*, Zoe Greenberg, April 20, 2017, available at <https://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html> (last visited January 31, 2019).

² *See Id.*

In 2017, United States Senators Booker, Warren, Durbin, and Harris introduced a federal “Dignity for Incarcerated Women Act.” The bill, in part, provided access to health care products free of charge to female inmates and restricted Federal Bureau of Prisons (BOP) employees from entering restrooms of incarcerated individuals of the opposite sex except in exigent circumstances. The bill did not become law.³

At the same time that the “Dignity for Incarcerated Women Act” was pending, the BOP issued new policies regarding the access to feminine hygiene products.⁴ Before the policy change, the BOP only broadly required “sanitary products” to be made available for free, and the specific type of products available at no cost varied depending on the BOP facility. The new policy required wardens to ensure inmates were provided with specified products at no cost to the inmates, including:

- Tampons, regular and super-size;
- Maxi pads with wings, regular and super-size; and
- Panty liners, regular.⁵

Additionally, the “First Step Act of 2018,” which became law in December, 2018, in part, requires the Director of BOP to make tampons and sanitary napkins “available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner.” The Director must also ensure that the quality of these products conform to applicable industry standards.⁶

In addition to federal facilities, many states have evaluated their policies on these issues after reports surfaced about inconsistencies. Several states have made changes either statutorily or through procedural rules changes.⁷

³ United States SB 1524 – 115th Congress (2017-2018), available at <https://www.congress.gov/bill/115th-congress/senate-bill/1524?q=%7B%22search%22%3A%5B%22dignity+for+incarcerated+women%22%5D%7D&s=1&r=3> (last visited January 31, 2019). See also Cory Booker, *Senators Booker, Warren, Durbin, Harris Introduce Landmark Bill to Reform the Way Women Are Treated Behind Bars*, July 11, 2017, available at https://www.booker.senate.gov/?p=press_release&id=629 (last visited January 30, 2019).

⁴ United States Department of Justice, Federal Bureau of Prisons, *Provision of Feminine Hygiene Products*, August 1, 2017, available at https://www.bop.gov/policy/om/001_2017.pdf (last visited January 31, 2019)(hereinafter cited as “BOP Policy”); See also Cory Booker, *Booker Commends New Bureau of Prisons Policy Requiring Certain Feminine Health Care Products to be Provided to Women Free of Charge*, August 16, 2017, available at https://www.booker.senate.gov/?p=press_release&id=654 (last visited January 31, 2019).

⁵ BOP Policy.

⁶ First Step Act of 2018, Pub. L. No. 115-391, s. 611 (2018).

⁷ NPR, *Arizona Department Of Corrections Changes Sanitary Pad Policy Following Backlash*, Amy Held, February 15, 2018, available at <https://www.npr.org/sections/thetwo-way/2018/02/15/586134335/arizona-department-of-corrections-changes-sanitary-pad-policy-following-backlash> (last visited January 31, 2019)(Arizona Department of Corrections modified its policy from limiting female inmates’ access to sanitary napkins from 12 to 36 per month); The Washington Post, *‘They’re as necessary as toilet paper’: New York City Council approves free tampon program*, Katie Mettler, June 23, 2016, available at https://www.washingtonpost.com/news/morning-mix/wp/2016/06/23/menstrual-equity-ny-city-council-approves-giving-away-tampons-to-women-in-schools-prisons-and-homeless-shelters/?utm_term=.b410efb4ff12 (last visited January 31, 2019)(New York City council approved a measure that would give all women in public schools, prisons, and homeless shelters access to feminine hygiene products free of charge).

Prison Rape Elimination Act

The United States Congress passed the “Prison Rape Elimination Act of 2003” (PREA) to provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide resources and recommendations to protect individuals from prison rape. In addition to providing resources, funding was provided to all levels of correctional facilities to assist facilities throughout the nation with implementing standards to reduce the occurrence of prison rape.⁸ The statute applies to any confinement facility, including jails, police lockups, and juvenile facilities,⁹ and defines “rape” to include a broad range of unwanted sexual activity.¹⁰

In passing the PREA, Congress noted that the nation was “largely unaware of the epidemic character of prison rape and the day-to-day horror experienced by victimized inmates.”¹¹ The legislation also established a National Prison Rape Elimination Commission (Commission) to perform a comprehensive legal and factual study on various impacts of prison rape in the United States and to recommend to the Attorney General national standards for detecting, preventing, reducing, and punishing prison rape.¹²

The PREA standards adopted by the Commission included a phased-in ban on cross-gender pat-down searches of female inmates in adult prisons, jails, and community confinement facilities absent exigent circumstances.¹³ The PREA standards also:

- Prohibit cross-gender strip searches and visual body cavity searches in all facilities, except in exigent circumstances or when performed by medical practitioners;¹⁴
- Require facilities to implement policies and procedures that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks;
- Require staff of the opposite gender to announce their presence when entering an inmate housing unit; and
- Prohibit cross-gender pat-down searches of both female and male residents in juvenile facilities.¹⁵

Both the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) are in compliance with the PREA Guidelines and have adopted zero tolerance policies regarding actions that are prohibited by the PREA standards. Additionally, each agency employs a

⁸ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79 (2003); National PREA Resource Center, *Prison Rape Elimination Act, About Page*, available at <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last visited January 31, 2019).

⁹ 42 U.S.C. s. 15609(7)

¹⁰ 42 U.S.C. s. 15609(9).

¹¹ 42 U.S.C. 15601(12). See Department of Justice, *National Standards to Prevent, Detect, and Respond to Prison Rape Executive Summary*, p. 1, May 16, 2012, available at https://ojp.gov/programs/pdfs/prea_executive_summary.pdf (last visited January 30, 2019)(hereinafter cited as “PREA Executive Summary”).

¹² 42 U.S.C. s. 15606(d)(1), (e)(1).

¹³ PREA Executive Summary, p. 5. The PREA standards specifically prohibit compliance with the cross-gender search provision from restricting female inmates’ access to programming and out-of-cell opportunities.

¹⁴ *Id.* If a cross-gender search is conducted in this manner it must be documented.

¹⁵ *Id.*

designated PREA Coordinator responsible for the development, implementation, and oversight of the agency's efforts to comply with the PREA standards.¹⁶ Additionally, s. 901.211, F.S., and the Florida Model Jail Standards (FMJS), provide the minimum standards that Florida's jails must meet and contain similar search standards as the PREA standards.

Policies Related to Florida's Incarcerated Women

Department of Corrections

Section 944.09(1), F.S., provides the DOC with broad rule making authority to implement its statutory responsibilities, including, in part, the:

- Operation and management of the correctional institution or facility and its personnel and functions;
- Conduct of custodial and other personnel; and
- Furnishing of health and comfort items to indigent prisoners.

The DOC has promulgated several rules that address these specific operational areas. Inmate health and comfort items must be provided in accordance with the guidelines in the Inmate Health and Comfort Items – Issuance, Form NI1-071 (Form).¹⁷ The Form addresses, in part, the provision of health care items such as toothbrushes,¹⁸ toothpaste,¹⁹ disposable razors,²⁰ bath soap,²¹ toilet paper,²² and feminine hygiene products.²³ This procedure provides consistency with the issuance of these types of products.

Searches of inmates are to be made with discretion and conducted to control the introduction and movement of contraband and to prevent escapes.²⁴ Clothed searches of female inmates may only be performed by male staff during an emergency situation as determined by the shift supervisor, except for:

- Instances when time and circumstances do not permit the arrival of female staff; or

¹⁶ DOC, *PREA*, available at <http://www.dc.state.fl.us/PREA/index.html> (last visited January 30, 2019); DJJ, *PREA*, available at <http://www.djj.state.fl.us/partners/prison-rape-elimination-act-%28prea%29> (last visited January 30, 2019).

¹⁷ Fla. Admin. Code R. 33-602.101(12). Form NI1-071, Inmate Health and Comfort Items – Issuance can be accessed at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09985> (last visited on January 31, 2019).

¹⁸ *Id.* The Form provides that each inmate is provided one tooth brush upon initial arrival. The housing officers/sergeant on the shift designated in the institutional schedule must also issue toothbrushes on a one-for-one exchange basis, once every 30 days.

¹⁹ *Id.* Each inmate is provided one tube upon initial arrival and can be replaced when empty or once every 30 days.

²⁰ *Id.* This provision only applies to female inmates who are part of the general population and provides that one razor is issued upon initial arrival and once every seven days.

²¹ *Supra*, n. 16. Each inmate is provided one bar of soap upon initial arrival, which may be replaced once every seven days. The DOC states that the bath soap provided by the DOC is a soap whose ingredient is to moisturize, but it is called a deodorizing soap. The Department of Corrections, SB 332 Agency Analysis, p. 4, January 23, 2019 (on file with Senate Criminal Justice Staff)(hereinafter cited as “The DOC SB 332 Analysis”).

²² *Id.* Each inmate is provided one roll upon initial arrival and can be provided outside of a seven day interval in certain instances.

²³ *Id.* Each inmate will be issued feminine hygiene products on an as needed basis and in accordance with Fla. Admin. Code R 33-602.101, which requires the inmate to make a medical request.

²⁴ Fla. Admin. Code R. 33-602.204.

- In the event of an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates, provided there is consultation with the shift supervisor prior to conducting the search.²⁵

Strip searches of inmates must be conducted only by correctional officers who are the same sex as the inmate, except in emergency circumstances. The Rule details specified circumstances when strip searches are appropriate.²⁶ Internal examination of the body orifices, when required, will be made by medical personnel only, as well as examination of any bandages or casts.²⁷

The DOC reports that as of June 30, 2018, there were 6,658 female inmates accounting for 6.9 percent of the overall total inmate population.²⁸

Department of Juvenile Justice

Section 985.64, F.S., provides the DJJ with rulemaking authority to implement all provisions of ch. 985, F.S. All rules and policies must conform to accepted standards of care and treatment.²⁹ Specifically, the DJJ must adopt rules to ensure the effective provision of health services, including ordinary medical care, to youth in facilities or programs operated or contracted by the DJJ.³⁰

The DJJ reports that it provides all female youth with basic health products.³¹ The DJJ is required to provide youth with individual hygiene supplies, including:

- Toothbrush and toothpaste;
- Soap;
- Shampoo;
- Combs or brushes;
- Shaving supplies;
- Body lotion; and
- Feminine hygiene supplies for females.³²

²⁵ Fla. Admin. Code R. 33-602.204(1)(a).

²⁶ Fla. Admin. Code R. 33-602.204(2)(a) and (b). The instances include upon an inmate's arrival at the institution from court, other institutions, or from any other place where they may have come in contact with the public; when an inmate is apprehended after an escape, attempted escape or hideout, they will also be given a strip search. There may be other occasions for a strip search, such as before they are admitted to confinement or at any time when they are suspected of carrying contraband.

²⁷ Fla. Admin. Code R. 33-602.204(2)(e)4.

²⁸ The DOC SB 332 Analysis, p. 2.

²⁹ Section 985.64(1), F.S.

³⁰ Section 985.64(2)(a), F.S.

³¹ The DJJ, HB 49 Agency Analysis, January 16, 2019, p. 2 (on file with the Senate Criminal justice Committee)(hereinafter cited as "The DJJ HB 49 Analysis")(HB 49 is substantially similar to the current bill). The products specifically mentioned in the analysis include body wash, shampoo, maxi pads, deodorant, toothbrushes, toothpaste, hair combs, hair brushes, body lotion, hair ties, and any health products as needed by youth or prescribed by a doctor.

³² Fla. Admin. Code R. 63E-7.007 (residential commitment programs) and Fla. Admin. Code R. 63G-2.025 (detention centers)(This Rule uses the phrase "sanitary napkins" instead of "feminine hygiene supplies."). Additionally, Fla. Admin. Code R. 63E-7.006, requires the residential commitment programs to address the needs of a targeted gender group and that health and hygiene, in part, are key components in providing a gender specific program.

The DJJ also has established rules for both its residential³³ and detention³⁴ youth populations detailing when different types of searches, including frisk,³⁵ strip,³⁶ and cavity searches, are necessary and the appropriate conditions under which such searches can occur. All searches must be documented in designated logs, the Facility Management System³⁷ or a manual logbook used for these recordings, and on the shift report.³⁸ Frisk searches must be conducted during specified times³⁹ and an officer of the same sex as the youth being searched must conduct a frisk search.⁴⁰

Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband. These searches must occur in a private area in the presence of two staff members of the same gender as the youth being searched. However, if two staff of the same gender as the youth are not available, one staff of the same gender as the youth may conduct the strip search while a staff of the opposite gender is positioned to observe the staff person conducting the search. However, in these instances, the cross-gender employee cannot view the youth.⁴¹

Cavity searches must be approved by the Superintendent or designee when it is strongly suspected that a youth has concealed contraband in a body cavity. Trained medical personnel must conduct a cavity search in a hospital setting and detention staff are not authorized to conduct cavity searches.⁴²

The DJJ reports that there were 2,871 female youth served in secure detention and 554 female youths committed to residential programs during FY 2017-18.⁴³

³³ Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines “restrictiveness level,” addresses the different levels of commitment programs, including “minimum-risk nonresidential,” “nonsecure residential,” and “high-risk residential.”

³⁴ Section 985.03(18), F.S., provides “detention care” means the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order. Further, it provides that “Secure detention” means temporary custody of the child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement and “Nonsecure detention” means temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement.

³⁵ Fla. Admin. Code R. 63G-2.014(32). Frisk searches are defined as a physical search of the person involving the passing of hands over the person’s outer clothing.

³⁶ Fla. Admin. Code R. 63G-2.014(63). Strip searches are defined as a visual check of a youth without clothing. A strip search shall be conducted in a private area with two staff members present, both of the same sex as the youth being searched.

³⁷ Fla. Admin. Code R. 63G-2.014(29). The computer based system used by state-operated juvenile detention centers as the primary source of documentation and reporting for facility operations. Forms and reports generated by the Facility Management System are considered to be both the official and original documentation.

³⁸ Fla. Admin. Code R. 63G-2.019.

³⁹ These include during admission, following activities outside the secure area of the facility, following visitation with a person(s) from outside of the facility (visitation, attorney, clergy, etc.), prior to and after transportation, if there is a reasonable suspicion that a youth is harboring contraband, or prior to being placed in behavioral confinement. Fla. Admin. Code R. 63G-2.019(11)(e)1.-3. *See also* Fla. Admin. Code R. 63E-7.013(10)(b) and (11), for slight variations to these circumstances applicable to residential commitment programs.

⁴⁰ *Id.*

⁴¹ Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5. (detention facilities); Fla. Admin. Code R. 63E-7.004(1)(a) (residential commitment programs).

⁴² Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.013(10)(c).

⁴³ Email from Rachel Moscoso, Legislative Affairs Director, DJJ, Re: SB 332 (on file with Senate Criminal Justice Committee)(January 30, 2019).

Local Correctional Facilities

Section 901.211, F.S., provides procedures for conducting searches of any person arrested in Florida. A person arrested for a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance, cannot be subjected to a strip search⁴⁴ unless:

- There is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property; or
- A judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and therefore shall be incarcerated in the county jail.⁴⁵

Each strip search must be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. A person observing a search must be of the same gender as the arrested person.⁴⁶ Any body cavity search must be performed under sanitary conditions.⁴⁷

Additionally, the Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld.⁴⁸ The FMJS Committee is required to develop and continually enforce model standards adopted by the group. There are six subcommittees each having distinct missions and objectives, which, in part, include a Medical Subcommittee and a PREA Subcommittee.

As it relates to searches, the FMJS outlines that an inmate must be examined for contraband upon admission and booking.⁴⁹ The FMJS specifies that a body cavity search must only be conducted by licensed medical personnel and a written report documenting such action must be submitted to the Officer-in-Charge or designee. The FMJS requires that inmates be searched by certified staff when being admitted to a detention facility. However, FMJS provides that an inmate being admitted to the facility for traffic, regulatory, or non-violent misdemeanor offenses will be strip searched only for cause. The FMJS specifies that a strip search must be conducted by a person of the same gender as the arrested person and in such a manner that the search cannot be seen by persons not physically conducting or observing the search. Additionally, any person observing the search must be of the same gender as the arrested person. The FMSJ provides that a body cavity search must only be made for cause and be conducted by licensed medical personnel.⁵⁰

⁴⁴ Section 901.211(1), F.S., defines strip search to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

⁴⁵ Section 901.211(2), F.S. Additionally, a law enforcement officer must not order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty. Section 901.211(5), F.S.

⁴⁶ Section 901.211(3), F.S.

⁴⁷ Section 901.211(4), F.S.

⁴⁸ Florida Sheriff's Association (FSA), *Florida Model Jail Standards, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 30, 2019) (hereinafter cited as "FMJS Rule").

⁴⁹ FMJS Rule 4.2.

⁵⁰ FMJS Rule 4.3.

It is unclear whether there are consistent rules throughout the Sheriff's entities regarding the manner, type, and frequency of the provision of health care products, including, but not limited to, feminine hygiene products. Statutes and the FMJS are silent on this issue. One example of a local correctional facility's policy has been reported on in response to recent legislation. David Teems, spokesman for the Leon County Sheriff's Office, reports that the feminine hygiene product offered at the Leon County Jail is one that is "more universally used" and "there is no limit to how many are provided to inmates. There is no charge to the inmates for the product."⁵¹

III. Effect of Proposed Changes:

The bill creates new statutory language to address how correctional facilities must handle certain procedural and administrative processes that are unique to the incarceration of women. The bill provides that the act may be cited as the "Dignity for Incarcerated Women Act."

Definitions

The bill defines various terms, including:

- "Correctional facility," which means any part of the correctional system⁵² and any county detention facility,⁵³ juvenile detention center⁵⁴ or facility,⁵⁵ temporary holding center, or other criminal detention facility operated by or on behalf of the state or any political subdivision.
- "Correctional facility employee," which means a correctional officer employed by a correctional facility.
- "Health Care products," which is defined as:
 - Feminine hygiene products, including tampons;
 - Moisturizing soap that is not lye-based;
 - Toothbrushes and toothpaste; and
 - Any other health care product the correctional facility deems appropriate.
- "State of undress," which means not dressed or not fully dressed.

Access to Health Care Products

The bill requires "health care products" to be made available to each incarcerated woman at no cost and in a quantity that is appropriate to the needs of the woman. Additionally, the bill

⁵¹ Tallahassee Democrat, *Florida lawmakers demand 'dignity for incarcerated women'*, James Call, January 26, 2019, available at <https://www.tallahassee.com/story/news/2019/01/26/florida-lawmakers-demand-dignity-incarcerated-women-sanitary-napkins-tampons/2676725002/> (last visited January 30, 2019).

⁵² Sections 944.02(2) and 945.01(1), F.S., provide "correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the DOC.

⁵³ Section 951.23(1)(a), F.S., provides that "county detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor.

⁵⁴ Section 985.03(19), F.S., provides that "detention care facility" means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.

⁵⁵ *Supra*, n. 33.

requires that health care products be made available in common housing areas and medical care facilities. The bill prohibits a correctional facility from requiring a medical:

- Referral for an inmate to be provided such health care products; or
- Diagnosis for an incarcerated woman to access health care products.

Limitations on Male Correctional Facility Employees

The bill also requires certain conduct to be followed by male correctional facility employees in times when such employees are supervising women inmates. Specifically, the bill provides that a male correctional facility employee:

- Is prohibited from conducting a pat-down or body cavity search on an incarcerated woman except in situations where the incarcerated woman is presenting an immediate risk of harm and a female correctional facility employee is not available to conduct the search; and
- Must announce his presence upon entering a housing unit for incarcerated women.

Additionally, with the exception of specified circumstances, a male correctional facility employee is prohibited from entering an area of the correctional facility in which an incarcerated woman may be in a state of undress or an area where an incarcerated woman in a state of undress may be viewed. The bill provides that such areas include, but are not limited to restrooms, shower areas, and medical treatment areas. The exceptions provided in the bill specific to this provision include when there is a medical emergency or when an incarcerated woman is presenting a danger to herself or others. If one of these limited circumstances is presented, a male correctional facility employee may enter an area where incarcerated women may be in a state of undress, if:

- A female correctional facility employee is unavailable; or
- A female correctional facility employee requires assistance.

A male correctional facility employee must document any incident, including the circumstances that necessitated the employee's actions, where the male employee either performs a search of an incarcerated woman or enters a prohibited area within three days of the incident.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires all correctional facilities, including local county detention facilities and detention centers, to provide specific health care products. It is possible that the requirements of the bill related to the provision of health care products could result in local fund expenditures. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private companies that currently have contracts with state and local correctional facilities to provide certain health care products that do not meet the criteria laid out in the bill may have a negative fiscal impact (i.e., decrease in profits) if the current contracts have to be cancelled or modified.

Additionally, private companies that can supply products that do meet the criteria of the products defined in this bill could have a positive fiscal impact (i.e., increase in profits) if the bill results in new contracts for such products or modifications to current contracts to offer these additional or different types of products.

C. Government Sector Impact:

The bill requires specified health care products to be provided at no cost to female inmates in all correctional facilities in the state. To the extent that the bill requires any of the specified facilities to provide additional or different products than are currently being offered, the bill will likely have a positive fiscal impact (i.e., unquantifiable increase in costs) to the correctional facilities.

The DOC states that the fiscal impact of the bill is indeterminate at this time.⁵⁶ The DOC is in substantial compliance with the provisions of the bill related to male correctional facility employees and female inmates. However, there will likely be a positive fiscal impact (i.e., unquantifiable increase in costs) if the DOC is required to provide health care products outside of the products it is currently providing through its contracted

⁵⁶ The DOC SB 332 Analysis, p. 4.

vendors. The DOC estimates that the transition to tampons *exclusively* from sanitary napkins will result in a cost increase of 408 percent annually (from \$110,954 annually to \$563,372 annually).⁵⁷ However, the bill does not require correctional facilities to transition exclusively to any particular type of feminine hygiene product.

The DJJ reports that it currently meets all requirements of the proposed bill and therefore the bill will not result in a fiscal impact.⁵⁸

The Florida Sheriff's Association has not submitted an analysis on the impact this bill will have on its members. As mentioned above, it is unclear what types of health care products are currently being offered to female inmates in local correctional facilities. To the extent that this bill requires the facilities to modify the products they are currently offering free of charge to female inmates, the bill will likely result in a positive fiscal impact (i.e., unquantifiable increase in costs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 944.242 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 11, 2019:

The Committee Substitute modifies the definitions of:

- “Correctional facility” to include the term county detention center, rather than jail, providing consistency with definitions found in other sections of law;
- “Correctional facility employee” to only apply to correctional officers, rather than all correctional facility staff; and
- “Health care products” to specifically include tampons as a type of feminine hygiene product.

⁵⁷ The Department of Corrections, SB 332 Agency Analysis Updated for Amendment 404354, p. 6, February 11, 2019 (on file with Senate Criminal Justice Staff).

⁵⁸ The DJJ HB 49 Analysis, p. 3.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
