

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 41 Correctional Facility Employees
SPONSOR(S): Criminal Justice Subcommittee, Drake
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Introducing or possessing contraband on the grounds of a state correctional institution and transmitting contraband to an inmate outside of a state correctional institution are prohibited by law. The severity of the criminal penalty varies depending on the contraband. A person commits a third degree felony if the contraband is a letter or recorded communication, currency, food, clothing, or cell phone or similar communication device, punishable by up to five years imprisonment and a \$5,000 fine. A person commits a second degree felony if the contraband is an intoxicating beverage, controlled substance or similar drug, or a firearm or weapon, punishable by up to fifteen years imprisonment and a \$10,000 fine.

CS/HB 41 increases the penalty for introducing, transmitting, or possessing a cell phone or other communication device on the grounds of a correctional institution from a third degree felony to a second degree felony.

The bill enhances the penalty for introducing contraband committed by an employee who uses his or her position to introduce the contraband into a correctional institution by increasing the offense level one level above the ranking specified in the offense severity ranking chart for the offense committed.

Public officials and employees convicted of certain criminal offenses are subject to forfeiture of retirement benefits. The offenses include embezzlement, bribery, corruption, official misconduct, an impeachable offense, a felony offense by a public officer or employee who uses an office or position for profit, and certain sex offenses. The bill adds introducing contraband by an employee to the list of offenses which may result in the forfeiture of retirement benefits.

The bill may have an indeterminate negative fiscal impact on state government. Increasing the penalty for introducing a cell phone and a contraband offense committed by an employee may result in increased costs to state prisons as a result of additional prison admissions or longer sentences.

The bill provides an effective date of October 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Introduction of Contraband

Introducing contraband into a correctional facility is a problem that impacts the security of the institution, the security of the public, and the security and physical health of inmates. In particular, introducing cell phones and controlled substances has become an increasingly serious issue for the Department of Corrections. Between 2017 and 2018, corrections staff confiscated more than 9,000 cell phones and approximately 79 pounds of synthetic marijuana.¹ Although the introduction of contraband can often be attributed to criminal gang activity or visitors, in 2018 there were at least 19 correctional officers and staff who were accused of misconduct relating to contraband.² Four correctional officers and a former chaplain have been arrested for introducing contraband into a correctional institution in 2019.³

Section 944.47, F.S., prohibits introducing contraband into a state correctional institution⁴, transmitting contraband to an inmate outside the grounds of a state correctional institution, and possessing contraband on the grounds of a state correctional institution. A person commits a third degree felony⁵ if the violation involves the following contraband items:

- A letter or recorded message;
- Currency;
- Food;
- Clothing; or
- A cell phone, laptop, tablet, or similar communication device.

A person commits a second degree felony⁶ if the violation involves the following contraband items:

- An intoxicating beverage;
- A controlled substance under s. 893.02(4), F.S., or similar drug; or
- A firearm, weapon, or explosive substance.

Criminal Punishment Code – Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code⁷ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (1) to most severe (10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.⁸ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.⁹ A person may also accumulate points for

¹ Dan Sullivan, *Spice and cell phones: Florida's prisons see new wave of contraband*, Tampa Bay Times (Nov. 5, 2018), https://www.tampabay.com/news/publicsafety/crime/Spice-and-cell-phones-Florida-s-prisons-see-new-wave-of-contraband_172879515 (last visited Feb. 11, 2019).

² *Id.*

³ Florida Department of Corrections, *FDC Press Releases and Announcements*, <http://www.dc.state.fl.us/comm/press/2019/index.html> (last visited Feb. 11, 2019).

⁴ "State correctional institution" is defined to mean "any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department." S. 944.02(8), F.S.

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

⁷ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

⁸ S. 921.0022, F.S.

⁹ Ss. 921.0022 and 921.0024, F.S.

factors such as victim injury points, community sanction violation points, and certain sentencing multipliers.¹⁰ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.¹¹

Although the felony degree varies, possession of contraband on the grounds of a correctional institution is ranked as a level 3 offense regardless of the type of contraband involved. The criminal penalties and offense levels for introduction or transmission of contraband vary depending on the type of contraband and are as follows:

Contraband Item	Felony Degree	Offense Severity Level		
		Introduction	Transmission ¹²	Possession
Written or recorded communication	3	3	1	3
Currency	3	3	1	3
Food	3	3	1	3
Clothing	3	3	1	3
Cell phone or communication device	3	1 ¹³	1	3
Intoxicating Beverage	2	4 ¹⁴	4	3
Controlled Substance	2	4 ¹⁵	4	3
Firearm or weapon	2	6	4	3

Forfeiture of Retirement Benefits

A public officer or employee convicted of a specified offense committed before retirement, or whose office or employment was terminated by an admission to committing a specified offense, must forfeit his or her retirement benefits under any publicly funded retirement system.¹⁶ The accumulated contributions by an officer or employee are not subject to forfeiture.¹⁷ The specified offenses are:

- Embezzlement of public funds;
- Theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Bribery, corruption, bid tampering, and official misconduct as defined in ch. 838¹⁸;
- An impeachable offense¹⁹;
- A felony offense by a public officer or employee who uses or attempts to use his or her position to obtain a profit, gain, or other advantage; and
- Felony sexual battery against a victim younger than age 18 or a felony lewd and lascivious offense against a victim younger than 16.²⁰

¹⁰ S. 921.0024(2), F.S.

¹¹ *Id.*

¹² The transmission offenses are unranked and default to a level 1 offense for a third degree felony and a level 4 offense for a second degree felony. Ss. 921.0023(1) and 921.0023(2), F.S.

¹³ The offense is unranked and defaults to a level 1 offense. S. 921.0023(1), F.S.

¹⁴ The offense is unranked and defaults to a level 4 offense. S. 921.0023(2), F.S.

¹⁵ *Id.*

¹⁶ S. 112.3173(3), F.S.

¹⁷ *Id.*

¹⁸ Ss. 838.015, 838.016, 838.022, and 838.22, F.S.

¹⁹ The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of the district courts of appeal, judges of the circuits courts, and judges of the county courts are subject to impeachment for a misdemeanor committed while in office. Art. III, s. 17, Fla. Const. Public officers are also subject to impeachment for a violation of the code of ethics for public officers and employees in ch. 112, part III and ethics provisions in the Florida Constitution. S. 112.317(1)(a), F.S. and Art. II, s. 8, Fla. Const.

²⁰ S. 112.3173, F.S.

Effect of Proposed Changes

Introduction of Contraband

CS/HB 41 increases the penalty for introducing, transmitting, or possessing a cell phone or other communication device on the grounds of a correctional institution from a third degree felony to a second degree felony.²¹

Offenses by Employees

The bill enhances the penalty for introducing contraband committed by an employee who uses his or her position to introduce the contraband into a state correctional institution. The bill increases the offense level one level above the ranking specified in the offense severity ranking chart for the offense committed. The term “employee”²² includes employees of the Department of Corrections, employees or vendors under contract with the state, volunteers, and law enforcement officers who are on the grounds of a state correctional institution in the course of their employment.²³ The elevated offense level increases the minimum penalty for a contraband offense when committed by an employee.

Forfeiture of Retirement Benefits

The bill adds introducing contraband by an employee to the list of offenses which may result in the forfeiture of retirement benefits. As such, if an employee uses his or her position of employment to introduce contraband into a state correctional institution, the employee is subject to forfeiture of retirement benefits. Tying forfeiture of retirement benefits to the specific offense of introducing contraband by an employee provides the Department of Management Services a more direct forfeiture process than current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.3173, F.S., relating to felonies involving breach of public trust and other specified offenses by public officers and employees; forfeiture of retirement benefits.

Section 2: Amends s. 944.47, F.S., relating to introduction, removal, or possession of certain articles unlawful; penalty.

Section 3: Provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state government. Increasing the penalty for introduction of cell phones and contraband offenses committed by employees may result in increased costs to state prisons as a result of additional prison admissions or longer sentences.

²¹ The offense is unranked and defaults to a level 4 offense. S. 921.0023(2), F.S.

²² S. 944.115(2)(b), F.S.

²³ Law enforcement officers may be on the grounds of a correctional institution to transport inmates or conduct criminal investigations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2019, the Criminal Justice Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Increased the penalty for introducing a cell phone into a state correctional institution to a second degree felony.
- Increased the offense level for introducing contraband one level higher than the ranking on the offense severity ranking chart if the offense is committed by an employee.
- Provided a direct process for forfeiture of retirement benefits for an employee who is convicted of introducing contraband into a state correctional institution.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.