

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 49 Incarcerated Women
SPONSOR(S): Criminal Justice Subcommittee, Jones and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 332

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	11 Y, 0 N	Smith	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Corrections (DOC), Department of Juvenile Justice (DJJ), and county detention facilities are responsible for the health and safety of the inmates incarcerated within their facilities. DOC, DJJ, and county detention facilities currently provide various health and comfort items to inmates such as toothpaste, soap, shaving supplies, and feminine hygiene products. These facilities also have restrictions on the level of interaction a male correctional officer can have with a female inmate and restrictions on a male correctional officer searching a female inmate.

CS/HB 49 requires correctional facilities to make the following products available to an incarcerated woman in appropriate quantities at no cost:

- Feminine hygiene products, if needed for an active menstrual cycle;
- Moisturizing soap that is not lye-based;
- Toothbrushes;
- Toothpaste; and
- Any other healthcare product the correctional facility deems appropriate.

The bill prohibits a male correctional officer in a DOC or DJJ facility from:

- Conducting a pat-down, strip-search, or body cavity search on an incarcerated woman unless she is at risk of harming herself or another and a female correctional facility employee is not available;
- Entering a housing unit for incarcerated women without announcing his presence; and
- Entering into an area where an incarcerated woman may be in a state of undress or viewed in a state of undress.

The bill requires county detention facilities to adopt model standards for admitting, processing, searching, and housing female prisoners.

The bill does not appear to have a fiscal impact on state government. See Fiscal Analysis.

The bill may increase expenditures by an indeterminate amount for local governments with county detention facilities that are not currently providing the healthcare items required by the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Corrections

The Department of Corrections (DOC) is responsible for providing health and comfort items to inmates.¹ By rule, the following items are issued to indigent prisoners at no cost:²

- Toothbrushes;
- Toothpaste;
- Disposable razors;
- Bath soap;
- Toilet paper; and
- Feminine hygiene products.

Other health and comfort items are also available for purchase through inmate canteens.

DOC is also responsible for protecting the rights of inmates and ensuring inmate safety through its rules and procedures.³ A search of a female inmate must be conducted in the following manner:

- Clothed (pat-down): must be conducted by a female unless there is an emergency situation where a female corrections officer is not available and there is an imminent threat of physical violence to staff or inmates.⁴
- Strip search: must be conducted by a female correctional officer, except in emergency circumstances.⁵
- Body cavity search: must be conducted by a physician or designated member of the health services staff.⁶ A supervisor or ranking officer of the same sex must be physically present during a body cavity search.⁷ Complete documentation of a body cavity search must be submitted to the warden of the correctional facility.⁸

DOC procedure requires staff of the opposite gender to announce at the beginning of each shift that they will be present in a housing unit. Procedure also prohibits a correctional officer from supervising inmates of the opposite gender while inmates are showering or in the restroom area unless appropriate screening is provided.

Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) has the authority to adopt rules necessary to ensure the provision of health services and ordinary medical care to youth incarcerated in its facilities.⁹ DJJ supplies, at a minimum, the following:¹⁰

- Toothbrush and toothpaste;
- Soap;
- Shampoo;

¹ S. 944.09(1), F.S.

² R. 33-602.101 F.A.C.

³ Ss. 944.09(1)(a) and 944.09(1)(e), F.S.

⁴ R. 33-602.204(1)(a), F.A.C.

⁵ R. 33-602.204(2)(a), F.A.C.

⁶ R. 33-602.204(3)(c)8., F.A.C.

⁷ R. 33-602.204(3)(c)7., F.A.C.

⁸ R. 33-602.204(3)(c)12., F.A.C.

⁹ S. 985.64(2), F.S.

¹⁰ R. 63E-7.007, F.A.C.

- Combs or brushes;
- Shaving supplies;
- Body lotion; and
- Feminine hygiene products.

DJJ requires a search of a female youth to be conducted in the following manner:¹¹

- Clothed (pat-down): must be conducted by a female staff member.
- Strip search: must be conducted by a female staff member under observation of another female staff member.
- Body cavity search: there is no gender requirement, but must be conducted by trained medical personnel in a hospital setting. Detention staff are prohibited from conducting a body cavity search.

County Detention Facilities

The Florida Model Jail Standards (FMJS) outline the minimum standards a county detention facility must meet to ensure the constitutional rights of the incarcerated are upheld.¹² The FMJS requires the following items be provided to inmates:¹³

- Toothpaste;
- Toothbrush;
- Comb;
- Soap;
- Clean towel; and
- Feminine hygiene products.¹⁴

The FMJS requires a county detention facility to meet the following standards for housing female inmates:

- A female correctional officer must be on duty at all times when the facility houses a female inmate.¹⁵
- Female inmates must be separated by sight and sound from male inmates.¹⁶
- A female employee must process female inmates.¹⁷
- A strip-search must be conducted by a female.¹⁸
- A body-cavity search must be conducted by licensed medical personnel.¹⁹

Effect of the Bill

Healthcare Products

CS/HB 49 requires a DOC or DJJ facility to provide the following healthcare products at no cost to each incarcerated woman:

- Feminine hygiene products, if needed for an active menstrual cycle;
- Moisturizing soap that is not lye-based;
- Toothbrushes;
- Toothpaste; and

¹¹ R. 63G-2.019 F.A.C.

¹² Florida Sheriff's Association, *Florida Model Jail Standards, What is FMJS?*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited Mar. 14, 2019).

¹³ FMJS r. 5.6.

¹⁴ FMJS r. 5.8.

¹⁵ FMJS r. 5.1.

¹⁶ FMJS r. 5.2.

¹⁷ FMJS r. 4.6.

¹⁸ FMJS r. 4.3a.

¹⁹ FMJS r. 4.3b.

- Any other healthcare product the correctional facility deems appropriate.

The bill requires county detention facilities to adopt model standards that require provision of the same healthcare products to female inmates.

The bill prohibits a correctional facility from requiring an incarcerated woman to be diagnosed with an illness to access such healthcare items and that healthcare items be available both in common areas and in medical care facilities within the correctional facility.

Male Correctional Facility Employees

The bill prohibits a DOC or DJJ male correctional officer from conducting a pat-down, strip-search, or body cavity search on an incarcerated woman unless the woman presents an immediate risk of harm to herself or others and a female correctional employee is not available. The bill requires a male correctional officer to announce his presence upon entering a housing unit for incarcerated women and prohibits a male correctional officer from entering an area of a correctional facility where an incarcerated woman can reasonably be expected to be in a state of undress unless an incarcerated woman is suffering a medical emergency or presents an immediate risk of harm to herself or others. A male correctional officer who conducts a pat-down, strip-search, or body cavity search on an incarcerated woman or enters into an area where incarcerated women can reasonably be expected to be in a state of undress is required to document the incident no later than three days after the incident.

County Detention Facilities

The bill requires county detention facilities to create and adopt FMJS for admitting, processing, searching, and housing female prisoners.

B. SECTION DIRECTORY:

Section 1: Provides this act may be cited as the “Dignity for Incarcerated Women Act.”

Section 2: Creates s. 944.242, F.S., relating to dignity for women in correctional facilities.

Section 3: Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 4: 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:

Currently, the DOC and the DJJ provide the healthcare products listed in the bill to women incarcerated at their facilities at no cost. The agencies report that they comply with the requirements listed in the bill for male correctional facility employees. The bill should not have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent county detention facilities are not providing the healthcare products required to be provided by the bill free of charge, the bill may result in increased expenditures for local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires a female correctional officer to conduct a strip-search on an incarcerated female, unless the incarcerated female is a danger to herself or others.
- Requires county detention facilities to adopt model standards to provide certain healthcare products to female inmates and procedures for admitting, processing, searching, and housing female inmates.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Committee.