

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 Rules

BILL: CS/CS/SB 1286

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Simmons

SUBJECT: Contraband in Specified Facilities

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	Fav/CS
2.	Ravelo	Cibula	JU	Fav/CS
3.	Stokes	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1286 revises the list items that are contraband on the grounds of state correctional institutions, county detention facilities, juvenile detention facilities, juvenile commitment programs, and facilities operated by the Department of Children and Families (DCF), and the Agency for Persons with Disabilities (APD).

With respect to all facilities, the category of contraband for controlled substances is revised to expressly include medical marijuana, hemp, and industrial hemp. Moreover, for all facilities, the bill adds vapor-generating electronic devices to the list of contraband items. With respect to facilities operated by APD or DCF, the bill adds cellular telephones and other portable communications devices to the list of contraband items.

As a controlled substance, the introduction of medical marijuana, hemp, or industrial hemp on the grounds of a secure facility is a third degree felony. The intentional and unlawful introduction of a cellular telephone or portable communications device inside the secure perimeter of a DCF or APD facility is a third degree misdemeanor. Finally, it is a first degree misdemeanor to intentionally and unlawfully introduce a vapor-generating electronic device into the secure perimeter of any facility.

The bill ranks the introduction of a firearm or deadly weapon, or a controlled substance, into any of the above listed facilities as a level 4 offense.

The Criminal Justice Impact Conference estimates the House companion to this bill, which is substantively similar, will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds). The Legislature’s Office of Economic and Demographic Research preliminarily estimate of this bill is the same as the House companion bill. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Introduction of contraband is prohibited from certain government operated facilities. Specifically, Florida law prohibits the introduction of contraband into state correctional institutions, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF or the APD.¹

Introduction of Contraband at State Correctional Institutions (State Prisons)

Section 944.47, F.S., provides that it is a third degree felony² to introduce into or on the grounds of a state correctional facility, any of the following items:

- Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate.
- Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate.
- 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.³

A portable communication device is defined under this section as any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the internet or any other electronic device and which allows communication in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities which has been approved or issued by the department for investigative or institutional security purposes or for conducting other state business.⁴

Additionally, it is a second degree felony⁵ for a person to introduce into or on the grounds of a state correctional facility, any of the following items:

¹ Sections 916.1085, 944.47, 951.22, and 985.711, F.S.

² A third degree felony is punishable by up to five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

³ Section 944.47(1)(a)1., 2., and 6., F.S.

⁴ Section 944.47(1)(a)6., F.S.

⁵ A second degree felony is punishable by up to 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

- 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.⁶

Introduction of Contraband at County Detention Facilities (County Jails)

Section 951.22, F.S., provides that it is a first degree misdemeanor⁷ to introduce into or on the grounds of a county detention facility, any of the following items:

- Any written or recorded communication.⁸
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products.
- Any cigarette.
- Any cigar.
- Any intoxicating beverage or beverage that causes or may cause an intoxicating effect.⁹

Additionally, it is a third degree felony to introduce into or on the grounds of a county detention facility, one of the following items:

- 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), F.S.
- Any firearm or any instrumentality commonly used or intended to be a dangerous weapon.
- Any instrumentality of any nature which may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.
- Any cellular telephone or other portable communication device¹⁰ as described in s. 944.47(1)(a)6., F.S.¹¹

Introduction of Contraband at Juvenile Detention Facilities and Juvenile Commitment Programs

Section 985.711, F.S., provides that it is a third degree felony to introduce into or on the grounds of a juvenile detention facility or a juvenile commitment program, any unauthorized food or clothing.¹²

⁶ Section 944.47(1)(a)3.-5., F.S.

⁷ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

⁸ This does not apply to any document or correspondence exchanged between a lawyer, paralegal, or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate. Section 951.22(1)(a), F.S.

⁹ Sections 951.22(1)(a)-(g), F.S.

¹⁰ This does not include any device which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting official business.

¹¹ Sections 951.22(1)(h)-(k), F.S.

¹² Sections 985.711(1)(a)1., F.S.

Additionally, it is a second degree felony to introduce into or on the grounds of a juvenile detention facility or juvenile commitment program, any of the following items:

- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or non-prescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.¹³

Introduction of Contraband at the DCF and the APD Facilities

The DCF and the APD supervise certain criminal defendants who have been found incompetent to proceed or not guilty by reason of insanity.

Section 916.1085, F.S., provides that it is a third degree felony to introduce into or on the grounds of any facility under the supervision or control of the DCF or the APD, any of the following items:

- Any controlled substance as defined in ch. 893, F.S.
- Any firearm or deadly weapon.¹⁴

Additionally, intoxicating beverages or any item determined by the DCF or the APD to be hazardous to the welfare of clients or the operation of the facility are considered contraband.¹⁵ However, a violation of these items is not a criminal offense.

Florida's Controlled Substance Schedules

Section 893.02(4), F.S., defines controlled substance as any substance named or described in Schedules I-V of s. 893.03, F.S. Section 893.03, F.S., classifies controlled substances into five categories or classifications, known as schedules. The schedules regulate the manufacture, distribution, preparation, and dispensing of substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”¹⁶ of the substance and whether there is a currently accepted medical use for the substance.

Cannabis, Medical Marijuana, and Hemp

State correctional facilities, county detention facilities, juvenile detention and commitment programs, and facilities operated by the DCF and the APD currently prohibit any controlled substance as defined in ch. 893, F.S., including cannabis.

Section 893.02(3), F.S., defines cannabis as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

¹³ Section 985.711(1)(a)2.-4., F.S.

¹⁴ Section 916.1085(1)(a), F.S.

¹⁵ Section 916.1085(1)(a), F.S.

¹⁶ Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

Cannabis is prohibited contraband. However, recent changes made by the Legislature make prosecution of cannabis contraband offenses difficult. In 2014, the Legislature amended s. 893.02(3), F.S., to exclude medical marijuana as defined under s. 381.986, F.S.¹⁷ Similarly, in 2019, the Legislature exempted hemp as defined in s. 581.217, F.S., and industrial hemp as defined in s. 1004.4473, F.S., from the definition of cannabis under s. 893.02(3), F.S.¹⁸

Section 381.986(1)(f), F.S., defines marijuana as all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Section 581.217(3)(d), F.S., defines hemp as the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Section 1004.4473(1)(c), F.S., defines industrial hemp as all parts and varieties of the *Cannabis sativa* plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Vaping

During the 2019 Legislative Session, CS/SB 7012¹⁹ was adopted, to implement Amendment 9 to the State Constitution, which was approved by the voters of Florida on November 6, 2018, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces, as part of the Florida Clean Indoor Air Act. The use of e-cigarettes is commonly referred to as vaping.

“Vape” or “vaping” means to inhale or exhale vapor²⁰ produced by a vapor-generating electronic device or to possess a vapor-generating electronic device while that device is actively employing an electronic, a chemical, or a mechanical means designed to produce vapor or aerosol from a nicotine product or any other substance. The term does not include the mere possession of a vapor-generating electronic device.²¹

A “vapor-generating electronic device” is any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or

¹⁷ Chapter 2014-157, L.O.F.

¹⁸ Chapter 2019-132, L.O.F.

¹⁹ See ch. 2019-14, L.O.F. This legislation was approved by the Governor and took effect July 1, 2019.

²⁰ “Vapor” means aerosolized or vaporized nicotine or other aerosolized or vaporized substance produced by a vapor-generating electronic device or exhaled by the person using such a device. Section 386.202(14), F.S.

²¹ Section 386.203(13), F.S.

within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.²²

Criminal Punishment Code

The Criminal Punishment Code²³ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10). Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total 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.²⁴ Absent mitigation,²⁵ the permissible sentencing 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.²⁶

Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S. Currently, a felony of the third degree is ranked as a level 1 offense.²⁷

III. Effect of Proposed Changes:

Introduction of Contraband

The bill revises the list items that are contraband on the grounds of state correctional institutions, county detention facilities, juvenile detention facilities, juvenile commitment programs, and facilities operated by the Department of Children and Families (DCF), and the Agency for Persons with Disabilities (APD).

²² Section 386.203(15), F.S. Electronic nicotine delivery systems (ENDS) are “noncombustible tobacco products.” “These products use an ‘e-liquid’ that may contain nicotine, as well as varying compositions of flavorings, propylene glycol, vegetable glycerin, and other ingredients. The liquid is heated to create an aerosol that the user inhales.” “ENDS may be manufactured to look like conventional cigarettes, cigars, or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or mods, bear little or no resemblance to cigarettes.” *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS)*, U.S. Food and Drug Administration, available at <https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends> (last visited January 15, 2020).

²³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

²⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

²⁵ 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.

²⁶ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

²⁷ Section 921.0023(1), F.S.

With respect to all facilities, the category of contraband for controlled substances is revised to expressly include medical marijuana, hemp, and industrial hemp. Moreover, for all facilities, the bill adds vapor-generating electronic devices to the list of contraband items. With respect to facilities operated by APD or DCF, the bill adds cellular telephones and other portable communications devices to the list of contraband items.

As a controlled substance, the introduction of medical marijuana, hemp, or industrial hemp on the grounds of a secure facility is a third degree felony. The intentional and unlawful introduction of a cellular telephone or portable communications device inside the secure perimeter of a DCF or APD facility is a third degree misdemeanor. Finally, it is a first degree misdemeanor to intentionally and unlawfully introduce a vapor-generating electronic device into the secure perimeter of any facility.

Criminal Punishment Code

Additionally, this bill amends the Criminal Punishment Code Offense Severity Ranking Chart by ranking the previously unranked offense of introducing a firearm or deadly weapon, or a controlled substance into a facility operated or controlled by the DCF or the APD, as a level 4 offense. Currently this offense is an unranked third degree felony which means it has the “least severe” level 1 offense ranking for sentencing scores.

This bill is effective October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, estimates the House companion (HB 745) to this bill, which is substantively similar, will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).²⁸

Similarly, the Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimate for this bill is the same as the House companion bill.²⁹

The EDR provides the following information relevant to its preliminary estimate:

Per [Department of Corrections], in FY 18-19, there were 11 new commitments for introducing a controlled substance into a state prison and 132 new commitments for introducing contraband into a county detention facility (type of contraband not defined). There were no commitments for introduction of controlled substances into a DCF or DJJ facility. It is not known how the recent changes to marijuana law impacted contraband offenses prior to this amended language.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 916.1085, 944.47, 951.22, 985.711, and 921.0022.

²⁸ The CJIC meeting at which the House companion bill estimate was made occurred during a meeting of the Criminal Justice Estimating Conference on January 27, 2020. The meeting is available on video on the Florida Channel at <https://thefloridachannel.org/videos/1-27-20-criminal-justice-estimating-conference/> (last visited January 29, 2020).

²⁹ The EDR’s preliminary estimate is on file with the Senate Committee on Criminal Justice.

³⁰ *Id.*

IX. Additional Information:

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

CS/CS by Judiciary on February 11, 2020:

The committee substitute provides that a person is subject to punishment for certain offenses relating to contraband only if those offenses occur in intentional and unlawful manner.

CS by Criminal Justice on January 28, 2020:

The committee substitute changes the language of the statutes so that items are only considered contraband if they are brought into the “secure perimeter” of any facility.

Intoxicating beverages and other items deemed contraband by the DCF and the APD are prohibited in facilities controlled or supervised by those agencies. The committee substitute provides a person who introduces an intoxicating beverage or another item deemed contraband by the DCF or the APD into a facility controlled or supervised by the DCF or the APD commits a first degree misdemeanor.

Additionally, this committee substitute removes the full definition of cannabis and provides the appropriate cross reference to the term. Similarly, the full definition of vapor-generating electronic device is removed, and provides the appropriate cross reference to that term.

- B. **Amendments:**

None.