

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1029 Detention Facilities  
**SPONSOR(S):** Criminal Justice Subcommittee, Beltran  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 204

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 1 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

Florida law prohibits introduction of contraband into a state correctional institution, a county detention facility, and a juvenile detention facility or commitment program. Contraband is defined differently for each.

Cell phones are prohibited as contraband in a state correctional institution, punishable as a third degree felony. However, cell phones are not prohibited by law as contraband in a county detention facility. A county detention facility may prohibit cell phones by internal rule, allowing an officer to confiscate any phone discovered and discipline an inmate for a violation. However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how a cell phone enters the facility.

CS/HB 1029 adds cell phones and other portable communication devices to the definition of contraband in a county detention facility, punishable as a third degree felony. The bill reclassifies introduction of the following items into a county detention facility from a third degree felony to a first degree misdemeanor:

- Written or recorded communication;
- Currency or coin;
- Article of food or clothing;
- Tobacco products, cigarette, or cigar; and
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect.

The bill decreases the offense level for introducing an intoxicating drug into a county detention facility from a Level 6 offense to a Level 4 offense. This makes the offense level for introducing an intoxicating drug into a county detention facility consistent with the offense level for introducing an intoxicating drug into a state correctional institution. The bill also ranks the previously unranked offense of introducing an instrumentality which can be used to aid in an escape into a county detention facility as a Level 4 offense.

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 a similar version of 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, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Cell phones in state correctional institutions are a pervasive and documented problem, with the Department of Corrections confiscating more than 9,000 cell phones between 2017 and 2018.<sup>1</sup> 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.<sup>2</sup> Cell phone use in a county detention facility poses similar risks. Additionally, since many inmates in a county detention facility 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,<sup>3</sup> county detention facilities,<sup>4</sup> and juvenile detention facilities or commitment programs.<sup>5</sup> Introduction of contraband is either a second or third degree felony,<sup>6</sup> depending on the type of contraband introduced and the facility.<sup>7</sup> Contraband, which includes items that may pose a safety concern, is defined differently for each facility or program.

In a state correctional institution, contraband includes any:

- Written or recorded communication or any currency or coin;
- Article of food or clothing;
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect;
- Controlled substance as defined in s. 893.02(4), F.S., or any drug having a hypnotic, stimulating, or depressing effect;
- Firearm, weapon, or explosive substance; and
- Cell phone or other portable communication device.<sup>8</sup>

In a county detention facility, introduction of any of the following is a third degree felony:

- Written or recorded communication;
- Currency or coin;
- Article of food or clothing;
- Tobacco products, cigarette, or cigar;
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect;
- 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);
- Firearm or any instrumentality customarily used or intended to be used as a dangerous weapon; and
- Instrumentality that may be used or is intended to be used as an escape aid.<sup>9</sup>

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<sup>1</sup> 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](https://www.tampabay.com/news/publicsafety/crime/Spice-and-cell-phones-Florida-s-prisons-see-new-wave-of-contraband_172879515) (last visited Mar. 22, 2019).

<sup>2</sup> Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS (September 30, 2017), <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last visited Mar. 22, 2019); 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 visited Mar. 22, 2019).

<sup>3</sup> S. 944.47, F.S.

<sup>4</sup> S. 951.22, F.S.

<sup>5</sup> S. 985.711, F.S.

<sup>6</sup> 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 and 775.083, F.S.

<sup>7</sup> Ss. 944.47(2), 951.22(2), and 985.711(2), F.S.

<sup>8</sup> S. 944.47, F.S.

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

- Unauthorized article of food or clothing;
- Intoxicating beverage or any beverage that causes or may cause an intoxicating effect;
- Controlled substance, as defined in s. 893.02(4), F.S., or any drug that has a hypnotic, stimulating, or depressing effect; and
- Firearm or weapon of any kind or any explosive device.<sup>10</sup>

Cell phones or other portable electronic devices are only criminalized as contraband in a state correctional institution. A county detention facility may prohibit cell phones by internal rule, allowing officers to confiscate phones and discipline inmates for a violation.<sup>11</sup> However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how a cell phone enters the facility.<sup>12</sup>

### Criminal Punishment Code

The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.<sup>13</sup> 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 chart<sup>14</sup> or by default.<sup>15</sup> Judges must use the Criminal Punishment Code worksheet to compute a sentence score for each felony offender.<sup>16</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses and prior offenses.<sup>17</sup> 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 increased based on the type of injury and severity.<sup>18</sup> 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.<sup>19</sup>

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 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.<sup>20</sup> Absent mitigation,<sup>21</sup> 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.<sup>22</sup>

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<sup>9</sup> S. 951.22, F.S.

<sup>10</sup> S. 985.711(1), F.S.

<sup>11</sup> 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](https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf) (last visited December 14, 2017); Orange County Corrections Department, *Administrative Order No. IO.200 re: Inmate Discipline* (August 30, 2017) (copy on file with Criminal Justice Subcommittee Staff).

<sup>12</sup> 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 an independent crime.

<sup>13</sup> s. 921.002, F.S.

<sup>14</sup> s. 921.0022, F.S.

<sup>15</sup> 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.

<sup>16</sup> s. 921.0024, F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> s. 921.0022(2), F.S.

<sup>21</sup> 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.

<sup>22</sup> s. 921.0022(2), F.S.

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 2017-18, there were 1,015 offenders sentenced pursuant to s. 951.22, F.S., with 333 sentenced to prison for an average of 24.9 months.<sup>23</sup>

### Effect of Proposed Changes

CS/HB 1029 reclassifies introduction of any of the following items into a county detention facility from a third degree felony to a first degree misdemeanor:

- Written or recorded communication;
- Currency or coin;
- Article of food or clothing;
- Tobacco products, cigarette, or cigar; and
- Intoxicating beverage or beverage that causes or may cause an intoxicating effect.

Introduction of an intoxicating drug, firearm or weapon, or instrumentality which can be used to aid in an escape remain a third degree felony.

The bill adds cell phones and other portable communication devices to the list of prohibited contraband items in a county detention facility. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third degree felony, ranked as a Level 4 offense on the offense severity ranking chart.

The bill decreases the offense level for introducing an intoxicating drug into a county detention facility from a Level 6 offense to a Level 4 offense. This makes the offense level for introducing an intoxicating drug into a county detention facility consistent with the offense level for introducing an intoxicating drug into a state correctional institution. The bill also ranks the previously unranked offense, introducing an instrumentality, which can be used to aid in an escape into a county detention facility, as a Level 4 offense.

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

#### B. SECTION DIRECTORY:

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

**Section 2:** Amends s. 921.0022, F.S., relating to the criminal punishment code; offense severity ranking chart.

**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 Criminal Justice Impact Conference (CJIC) considered a similar version of 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

<sup>23</sup> Criminal Justice Impact Conference, *CS/SB 204 – Detention Facilities*, February 27, 2019.

<http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB204.pdf>

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offenders may be sentenced to prison with the inclusion of cell phones in the definition of contraband.<sup>24</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

Adding the new felony offense for introduction of a cell phone into a county detention facility may increase the need for county jail beds due to increased admissions.

**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:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the requirement that a law enforcement officer must electronically record a custodial interrogation relating to certain criminal offenses.
- Created a third degree felony for introducing a cell phone into a county detention facility.
- Ranked introduction of an intoxicating drug, cell phone, or escape aid into a county detention facility as a level four offense on the offense severity ranking chart.

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

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<sup>24</sup> Criminal Justice Impact Conference, *SB 1886 – Contraband in County Detention Facilities (Similar HB 73)*, January 29, 2018, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/archives/2018/SB1886.pdf>