

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 Judiciary

BILL: SB 1742

INTRODUCER: Senator Gainer

SUBJECT: Correctional Facility Employees

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1742 addresses the problem of employees introducing, possessing, and transmitting contraband, such as cell phones or other communication devices, at correctional institutions. The bill increases the offense of introducing cell phones or other communication devices from a third degree felony to a second degree felony and enhances the offense level one level above the ranking specified in the offense severity ranking chart. The bill also adds the offense of introducing any type of contraband by an employee of a correctional institution to the offenses for which a person may be required to forfeit his or her retirement benefits.

II. Present Situation:

Introduction or Possession of Contraband in a Correctional Institution

Section 944.47, F.S., prohibits introducing contraband into a state correctional institution, transmitting contraband to an inmate outside the grounds of a state correctional institution, and possessing contraband on the grounds of a state correctional institution.¹ The statute provides that, except through regular channels as authorized by the officer in charge, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any enumerated articles declared to be contraband.

A person commits a third degree felony if the contraband is:

- Any written or recorded communication;
- Currency;
- Food or clothing; or

¹ A state correctional institution means “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.” Section 944.02(8), F.S.

- A cell phone, or other portable communication device such as a pager, laptop, or similar device, intentionally and unlawfully introduced without prior authorization from the officer in charge.

A person commits a second degree felony if the contraband involves:

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

Criminal Punishment Code – Offense Severity Ranking Chart

The Criminal Punishment Code² is Florida’s primary sentencing policy. It applies to all felonies, except capital felonies, committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking from least severe, Level 1 to the most severe, Level 10.³ 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 drug trafficking offense.⁴ The state attorney’s office prepares the scoresheet and presents it to defense counsel for review. The sentencing judge must review the scoresheet for accuracy before signing it.⁵

Forfeiture of Retirement Benefits for Committing Specified Offenses

Florida Constitution

The Florida Constitution authorizes the forfeiture of retirement or pension benefits for a public officer or employee who is convicted of a felony. Article II, section 8(d) of the Florida Constitution states that

Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

Florida Statutes

The Legislature implemented the constitutional provisions in 1984 by enacting s. 112.3173, F.S., which has often been revised. Section 112.3173(3), F.S., dealing with the forfeiture of retirement benefits, currently states that any public officer or employee who is convicted of a specified offense that was committed before retirement, or who was terminated because of his or her admitted commission, aid, or abetment of one of the specified offenses

² Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

³ 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.

⁴ Florida Senate Bill Analysis and Fiscal Impact Statement, *Committee Substitute/Senate Bill 1030*, 2 (March 18, 2019), <http://www.flsenate.gov/Session/Bill/2019/1030/Analyses/2019s01030.cj.PDF>.

⁵ Florida Department of Corrections and Office of the State Courts Administrator, *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 5 (2018), http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

Specified Offenses

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, unlawful compensation, corruption, official misconduct, disclosure or use of confidential criminal or justice information, and bid tampering as defined in ch. 838, F.S.;
- An impeachable offense;⁶
- 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; or
- A felony lewd and lascivious offense against a victim younger than 16 years of age or a felony sexual battery against a victim younger than age 18 through the use or attempted use of power or position of the public office or employment position.⁷

III. Effect of Proposed Changes:

Penalties for Introducing Contraband

SB 1742 increases the penalty for introducing, transmitting or attempting to transmit, or possessing a cell phone or other portable communication device intentionally and unlawfully inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge. The term “portable communication device” is defined to cover a variety of communication devices that exist or new technology that is developed for similar purposes. The penalty is increased from a third degree felony to a second degree felony. A third degree felony is punishable by a fine of \$5,000 and imprisonment not to exceed 5 years.⁸ A second degree felony is punishable by a fine of \$10,000 and imprisonment not to exceed 15 years.⁹

Offenses Committed by Employees

The bill enhances the penalty for introducing any type of contraband when the offense is committed by an employee who uses his or her position to introduce the contraband into a state correctional institution. The bill increases the offense one level above the ranking specified in the offense severity ranking chart. “Employee” means an employee of the Department of Corrections or a private vendor under contract with the Department of Corrections or the Department of Management Services, and includes persons such as contractors, volunteers, or

⁶ The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts are liable to impeachment for committing a misdemeanor in office. FLA. CONST. art. III, s. 17. Public officers are subject to impeachment for violating the Code of Ethics for Public Officers and Employees as well as the ethics provisions in the State Constitution. Section 112.317(1)(a)1., F.S.

⁷ Section 112.3173(2)(e), F.S.

⁸ Sections 775.083 and 775.082, F.S.

⁹ *Id.*

law enforcement officers who are within a state correctional facility to perform a professional service.¹⁰

Forfeiture of Retirement Benefits

Finally, the bill includes introducing contraband by an employee at a correctional institution to the list of offenses that may result in the forfeiture of retirement benefits. Adding this provision to the statutes provides a more explicit forfeiture process than is expressed under current law.

The bill takes effect October 1, 2019.

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 Department of Corrections states that, because it is unknown how many cases could be prosecuted under this bill or what the sentence length might be, the impact on the

¹⁰ Section 944.115(2)(b), F.S.

prison system is indeterminate at this time.¹¹ The Criminal Justice Impact Conference adopted estimate is that the bill will have a positive insignificant impact, which is an increase of 10 or fewer prison beds.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3173 and 944.47.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹¹ Department of Corrections, *House Bill 41 Agency Legislative Bill Analysis* (Feb. 15, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=27862>.

¹² Criminal Justice Impact Conference, *Narrative Analyses of Adopted Impacts, CS/HB 41* (Updated through Feb. 27, 2019), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB41.pdf>.