

STORAGE NAME: h0145.cp

DATE: February 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 145

RELATING TO: Concealed Handcuff Keys

SPONSOR(S): Representative L. Miller

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2) GOVERNMENTAL RULES AND REGULATIONS
 - (3) LAW ENFORCEMENT AND CRIME PREVENTION
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Current law does not specifically prohibit the possession of a concealed handcuff key.

HB 145 creates a first degree misdemeanor for a person in the custody of a law enforcement officer to possess a concealed handcuff key. Under the bill, a "handcuff key" means "any key, tool, device, implement or other device used, designed, or intended to aid in unlocking or removing handcuffs or flexcuffs." The bill also defines other key terms and provides defenses to the charge in the following circumstances:

1. If the handcuff key was not secreted, but was one of several keys on the person's sole key ring;
2. If the person in custody immediately discloses to the officer that the person is in possession of a handcuff key; or
3. The person in possession of the handcuff key is a law enforcement officer, reserve or auxiliary officer, licensed security officer, or private investigator. However, even with respect to these persons, if the person fails to disclose his or her possession of a handcuff key to the officer upon being taken into custody, this defense does not apply.

The Criminal Justice Impact Conference(CJIC) has not determined the fiscal impact of this bill. However, on February 2, 2000 the CJIC estimated the fiscal impact of SB 184, which is similar to this bill, and found the fiscal impact to be indeterminate but minimal. It should be noted, however, that the penalty for SB 184 is a third degree felony, whereas the penalty provided in this bill is a first degree misdemeanor.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

3. Individual Freedom: to the extent this bill criminalizes possession of items which are currently lawful to possess by persons in custody, the bill could be considered a regulation of individual freedom in these narrow circumstances.

B. PRESENT SITUATION:

Current law does not specifically prohibit the possession of a concealed handcuff key, though possession of a concealed handcuff key could be punished under current law in certain contexts. For example, s. 951.22, provides, in part, that an inmate in a county detention facility commits a third degree felony if he or she possesses any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from such facility.

Section 944.47, provides that it is a third degree felony for an inmate in a state correctional facility to possess certain contraband specified in that section, however, a concealed key, tool, or other instrumentality that may be used to effect an escape is not listed in this section.

Section 951.23, provides, in part, that an inmate commits a second degree misdemeanor if he or she violates, on two or more occasions, a posted jail rule prohibiting:

- (1) Possession of contraband;
- (2) Anything not authorized for retention or receipt by the inmate and not issued to him or her through regular institutional channels; and
- (3) Conduct which disrupts or interferes with the security or orderly running of an institution.

Further, s. 944.40, provides that an inmate commits a second degree felony if he or she escapes or attempts to escape from any prison, jail, private correctional facility, road camp, or other penal institution.

Universal or master handcuff keys are available on the Internet and may be procured from various retail stores such as safety supply stores and military surplus stores.

C. EFFECT OF PROPOSED CHANGES:

HB 145 creates a first degree misdemeanor for a person in the custody of a law enforcement officer to possess a concealed handcuff key. Under the bill "custody" is defined as the detention of a person by means of handcuffs, flexcuffs, or any other movement restraining device regardless of whether the person is formally under arrest.

The bill defines "Handcuff key" as "any key, tool, device, implement or other device used, designed, or intended to aid in unlocking or removing handcuffs or flexcuffs."

The bill also defines "Concealed handcuff key" as:

. . . any handcuff key carried on a person in any manner indicating an intent to prevent discovery of the key by a law enforcement officer including, but not limited to, a handcuff key:

1. Carried in a pocket and unconnected to any key ring;
2. Carried on a necklace;
3. Secured by tape, glue or line to any body part or item of clothing;
4. Carried within any compartment, seam, fold or other encasement within any item of clothing, belt, shoe or jewelry;
5. Carried within any sock, hose, shoe, belt, undergarment, glove, hat or similar item;
6. Disguised as jewelry or other object on the person; or
7. Carried in any body cavity.

HB 145 also creates the following defenses to a violation of the bill:

1. If the handcuff key was not secreted, but was one of several keys on the person's sole key ring;
2. If the person in custody immediately discloses to the officer that the person is in possession of a handcuff key; or
3. The person in possession of the handcuff key is a law enforcement officer, reserve or auxiliary officer, licensed security officer, or private investigator. However, even with respect to these persons, if the person fails to immediately disclose his or her possession of a handcuff key to the officer upon being taken into custody, this defense does not apply.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Impact Conference(CJIC) has not determined the fiscal impact of this bill. However, on February 2, 2000 the CJIC estimated the fiscal impact of SB 184, which is similar to this bill, and found the fiscal impact to be indeterminate but minimal. It should be noted, however, that the penalty for SB 184 is a third degree felony, whereas the penalty provided in this bill is a first degree misdemeanor.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

While the intended application of HB 145 may appear clear, its actual application could be somewhat broad. For example, under the definition of "Handcuff key" provided in the bill, a box cutter, utility knife, or wire cutter could be a tool or other device used, designed or intended to aid in removing flexcuffs. A "flexcuff" is a large nylon or plastic band which is frequently used by law enforcement officers as a temporary restraining device. Flexcuffs can only be used once and are removed by cutting or clipping the flexcuff off of a suspect's wrists. Because a box cutter, utility knife, or wire cutter could aid in removing flexcuffs, the bill could apply to instances where the person was in possession of these items upon being taken into custody.

The intent of the bill is to criminalize possession of a "concealed handcuff key" when it is carried in a way which indicates an intent to prevent discovery of the item. However, the bill also specifically includes a "handcuff key" carried in a pocket of a piece of clothing when it is not connected to any keyring as a "concealed handcuff key." As a result, any person in the custody of a law enforcement officer who has any tool in their pocket, that is not attached to a keyring, and which is capable of cutting through a flexcuff, would be subject to this charge unless the person immediately told the officer of the item.

In addition, if a person in custody has a handcuff key in his or her pocket, as one of many keys on a keyring, and that person has no other keyrings on his or person, it is a defense to the charge. However, if that same person has two keyrings on his person, the defense does not apply. Also, if the same person has the handcuff key and only one other key on his or her keyring, the defense does not apply.

It is anticipated that a strike-everything amendment will be filed which deletes references to "flexcuffs" and would apply only to items which can aid in the removal of handcuffs. Also, the strike-everything amendment removes the "keyring" defense described above. The strike-everything amendment also increases the penalty to a third degree felony.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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David M. De La Paz

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