

STORAGE NAME: h0145a.grr
DATE: March 14, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
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 YEAS 5 NAYS 0
 - (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 6 NAYS 0
 - (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 third degree felony for a person in the custody of a law enforcement officer to possess a concealed handcuff key. The offense is ranked as a level 4 felony on the offense severity ranking chart of the Florida Punishment Code. Under the bill, a "handcuff key" means "any key, tool, device, implement or other thing used, designed, or intended to aid in unlocking or removing handcuffs." The bill also defines other key terms and provides defenses to the charge in the following circumstances:

- If the person in custody immediately discloses to the officer that the person is in possession of a handcuff key; or
- The person in possession of the handcuff key is a law enforcement officer, reserve or auxiliary officer, licensed security officer, private investigator, bail bond agent or runner, or a limited surety agent. 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.

The Committee on Crime and Punishment passed a strike-everything amendment which substantially changed the bill as originally filed. The amendment deleted the bill's references to "flexcuffs" and limited its application to only those items which can aid in the removal of handcuffs, and removed the "keyring" defense contained in the original draft. The amendment increased the penalty from first degree misdemeanor to a third degree felony for possessing a concealed handcuff key. In addition, "limited surety agents" were added to the list of persons for whom a defense is provided.

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:

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 punishable under current law in certain contexts. For example, s. 951.22, F.S., 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, F.S., 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, F.S., 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, F.S., 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.

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C. EFFECT OF PROPOSED CHANGES:

HB 145 creates a third degree felony for a person in the custody of a law enforcement officer to possess a concealed handcuff key. Under the bill "in custody" means any time while a person has been placed by a law enforcement officer in handcuffs regardless of whether such person is under formal arrest.

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

The bill also defines "concealed handcuff key" as:

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

1. In a pocket of a piece of clothing of a person, and unconnected to any key ring;
2. On a necklace of a person;
3. On the body part of a person or on any item of clothing of such person, when the handcuff key is secured on the body part or item of clothing by use of tape, glue, line or other material;
4. In or within any compartment, seam, fold or other encasement within any item of clothing, belt, shoe or jewelry of a person;
5. In or within any sock, hose, shoe, belt, undergarment, glove, hat or similar item of clothing or accessory of a person;
6. By a person and disguised as jewelry or other object; or
7. In or within any body cavity of a person.

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

1. If the person in custody immediately discloses to the officer that the person is in possession of a handcuff key;
2. The person in possession of the handcuff key is a law enforcement officer, reserve or auxiliary officer, licensed security officer, private investigator, bail bond agent or runner, or a limited surety agent. 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.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

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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.

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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime and Punishment passed a strike-everything amendment which substantially changed the bill as originally filed. The amendment deleted the bill's references to "flexcuffs" and limited its application to only those items which can aid in the removal of handcuffs, and removed the "keyring" defense contained in the original draft. The amendment also increased the penalty from first degree misdemeanor to a third degree felony for possessing a concealed handcuff key. In addition, "limited surety agents" were added to the list of persons for whom a defense is provided.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

David M. De La Paz

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