

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 Criminal Justice

BILL: SB 1886

INTRODUCER: Senator Brandes

SUBJECT: Contraband in County Detention Facilities

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1886 amends s. 951.22, F.S., adding cell phones and other portable communication devices (PCDs) to the definition of contraband articles that are prohibited from introduction into a county detention facility. The bill expands the third-degree felony offense of introduction of contraband into a county detention facility by applying the criminal penalties to the introduction of a cell phone or PCD.

Additionally, the bill amends s. 921.0022, F.S., specifying that the introduction of all enumerated articles of contraband into a county detention facility has a Level 6 ranking in the offense severity ranking chart.

The bill defines the term “portable communication device” 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 communications in any form. The bill further provides that these devices include, but are not limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, 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. The bill excludes from this definition any device having communication capabilities that have been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business.

The Criminal Justice Impact Conference met on January 29, 2018, and determined that this bill will result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

The bill is effective October 1, 2018.

II. Present Situation:

Florida law makes it a crime for a person to introduce unauthorized specified items, also known as “contraband,” into state correctional institutions,¹ county detention facilities,² and juvenile detention facilities or commitment programs.³ The offense of introducing contraband into a specified facility is either a second or third degree felony,⁴ depending on the type of contraband introduced and the facility.⁵ Additionally, each statute addressing this issue defines “contraband” differently.

Section 944.47(1)(a), F.S., which applies to state correctional facilities, defines “contraband” to include 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 prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Firearm or weapon of any kind or any explosive substance.
- Cellular telephone or other portable communication device (PCDs)⁶ 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.

A person who introduces a cell phone into a state correctional facility commits a third-degree felony.⁷

Section 951.22(1), F.S., which applies to county correctional facilities, defines “contraband” to include any:

- Written or recorded communication.
- Currency or coin.
- Article of food or clothing.

¹ Section 944.47, F.S.

² Section 951.22, F.S.

³ Section 985.711, F.S.

⁴ 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. Sections 775.082 and 775.083, F.S.

⁵ Sections 944.47(2), 951.22(2), and 985.711(2), F.S. Introduction of contraband includes the actual giving or transmission of a prohibited article, as well as the intent to give or transmit a prohibited article.

⁶ Section 944.47(1)(a)6., F.S., defines “PCD” 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 communications 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. However, the term PCD does not include any device having communication capabilities which has been approved or issued by the Department of Corrections (DOC) for investigative or institutional security purposes or for conducting other state business.

⁷ Section 944.47, F.S., further provides it is a third degree felony to introduce a written or recorded communication, currency or coin, or an article of food or clothing; and it is a second degree felony to introduce an intoxicating beverage, controlled substance, prescription or nonprescription drug that has a specified effect, firearm, weapon, or explosive substance.

- Tobacco products as defined in s. 210.25(12), F.S., any cigarette as defined in s. 210.01(1), F.S., or any 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), F.S.
- Firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- 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 a county facility.

Section 951.22, F.S., further provides it is a third degree felony to commit introduction of contraband into a county detention facility.

Section 985.711, F.S., which applies to juvenile detention facilities, defines “contraband” to include 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 prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Firearm or weapon of any kind or any explosive substance.⁸

Cellular Phones and Portable Communication Devices as Contraband

Contraband, especially PCDs, within correctional facilities can create a dangerous environment and present particular challenges for correctional staff. Cell phone use in state and county correctional facilities has been linked to threats, murder, complex criminal schemes, and escapes.⁹ Additionally, since many inmates in county detention facilities are awaiting trial, there is a heightened risk that cell phones could be used to intimidate witnesses and obstruct justice.¹⁰ The presence of PCDs in correctional facilities bypass security policies and safeguards put in

⁸ Section 985.711, F.S., provides it is a third degree felony to introduce an unauthorized article of food or clothing, but a second degree felony to introduce any of the other enumerated articles.

⁹ Dan Sweeney and Lisa Huriash, *Prisons Can't Stop Influx of Illegal Cellphones*, SUN SENTINEL (September 27, 2014), available at <http://www.sun-sentinel.com/local/palm-beach/fl-south-bay-cell-phones-20140926-story.html> (last visited February 15, 2018); Matt Riley, *Southern Prisons Have a Cellphone Smuggling Problem*, NBC NEWS, (September 30, 2017), available at <https://www.nbcnews.com/news/corrections/southern-prisons-have-smuggled-cellphone-problem-n790251> (last visited February 15, 2018); 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 February 12, 2018); and Eryn Rogers, *Cellphones in the Hands of Inmates Causing Problems*, 7 NEWS WSPA (July 21, 2016), available at <http://wspa.com/2016/07/21/cellphones-in-the-hands-of-inmates-causing-problems/> (last visited on February 19, 2018).

¹⁰ Peter Hermann, *Death For Byers in Witness Hit?*, THE BALTIMORE SUN (April 27, 2009), available at http://www.baltimoresun.com/bs-mtblog-2009-04-death_for_byers_in_hit-story.html (last visited February 19, 2018); Federal Communications Commission, *Putting an End to Illegal Cell Phone Use in Prisons*, available at <https://transition.fcc.gov/pshs/docs/summits/Combating-Contraband-Cell-Phones-in-Prison-Handout-v4.pdf> (last visited February 19, 2018); and Vivian Giang, *Inmate Talks To Us Over An Illegal Cell Phone About Working The Jailhouse Black Market*, BUSINESS INSIDER (July 2, 2012), available at <http://www.businessinsider.com/prisoner-shares-with-us-a-glimpse-of-the-hustle-behind-bars-2012-6> (last visited February 19, 2018).

place by a correctional agency to ensure safe communications by persons in its custody.¹¹ Such security policies may include oversight such as requiring inmate calls to be monitored and recorded and only allowing an inmate to make calls to previously authorized parties. These policies aid in preventing inmates from making threatening calls to citizens as well as to inhibit their ability to arrange contraband deliveries, plan escapes, or otherwise engage in criminal enterprise while in prison.¹²

As mentioned above, it is only a crime to introduce cell telephones or other portable electronic devices into state correctional institutions. The DOC reports that it confiscated from facilities:

- 6563 cell phones and 3517 cell phone accessories (such as chargers, SIM cards, battery packs) in FY 2015-16; and
- 9670 cell phones and 4886 cell phone accessories in FY 2016-17.

County detention facilities may prohibit cellular telephones by rule, allowing officers to confiscate phones and discipline inmates on those grounds.¹³ However, law enforcement cannot criminally charge a person for having a cell phone in a county detention facility or fully investigate how cell phones enter the facility.¹⁴ According to the Florida Department of Law Enforcement's Statistical Analysis Center, there were 2,058 arrest charges for contraband in county jails during FY 2016-17 and 1,933 in FY 2015-16.¹⁵

Prior to 2008, the introduction of cell phones and PCDs into state correctional facilities was handled through rule and disciplinary report procedures, similar to the manner that county jails are addressing the introduction of such items currently.¹⁶ During the 2008 Legislative Session, s. 944.47, F.S., was amended to add PCDs to the list of contraband articles.¹⁷

In anticipation of the 2008 legislation, the Office of Program Policy and Government Accountability (OPPAGA) evaluated whether the legislation was appropriate and necessary and reported its findings to the Legislature in April, 2008. The OPPAGA reported that contraband enters prisons through a variety of ways, including through inmate work squads, mail or prison deliveries, or through employees or visitors.¹⁸ The OPPAGA found that inmates could pay from \$300 to \$3,000 to have a PCD brought into a facility and since the introduction of a PCD was

¹¹ Office of Program Policy and Government Accountability, *Corrections' Contraband Effort is Sound; Cell Phone Penalties and Warden Consistency Are Needed*, Report No. 08-20, p. 3, (April, 2008), available at <http://www.oppaga.state.fl.us/reports/pdf/0820rpt.pdf> (last visited February 19, 2018) (hereinafter cited as "OPPAGA Report").

¹² *Id.*

¹³ See, e.g., Florida Sheriffs Association, *Florida Model Jail Standards, Standard Number 14.1*, p. 62, available at https://www.flsheriffs.org/uploads/docs/FMJS_07-01-2017.pdf (last visited February 15, 2018).

¹⁴ 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. Section 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 another independent crime.

¹⁵ Email from Ron Draa, Director of Legislative Affairs, Florida Department of Law Enforcement, RE: SB 1886 (February 16, 2018).

¹⁶ OPPAGA Report, p. 1.

¹⁷ Section 4, ch. 2008-250, L.O.F.

¹⁸ OPPAGA Report, p. 2.

only prohibited in rule, rather than a criminal offense, the repercussions for such introduction were minimal, including that an:

- Inmate caught with a prohibited PCD was subject to a disciplinary report, confined to a cell for no more than 60 days, and had to attend a disciplinary hearing that may result in the reduction of gain-time;¹⁹
- Employee who was found to have introduced a PCD was only subject to termination and revocation of his or her law enforcement certification (if a sworn correctional officer); and
- Civilian who was found to have introduced a PCD was subject to permanent revocation of his or her visiting rights.²⁰

The OPPAGA found that making the conveyance of PCDs to state correctional institutions a third degree felony was necessary to reduce incentives and deter inmates, staff, and visitors from committing this violation even though the legislation would likely result in an increase of commitments to state prison.²¹

Criminal Punishment Code

The Criminal Punishment Code²² applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the “offense severity ranking chart” from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the Legislature.²³ A defendant’s sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant’s prior record; and other aggravating factors. The points are added in order to determine the “lowest permissible sentence” for the offense.²⁴

The lowest permissible sentence in which total sentence points equal to or are less than 44 points is any nonstate prison sanction.²⁵ 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.²⁶

The DOC reports that in FY 2016-17 there were 803 offenders sentenced for a violation of introducing or possessing contraband upon the grounds of any county detention facility, which is

¹⁹ Gain-time is earned by an inmate in accordance with s. 944.275, F.S., and can reduce the inmate’s overall time served.

²⁰ OPPAGA Report, p. 4.

²¹ OPPAGA Report, p. 4 and 6.

²² Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Criminal Punishment Code is effective for offenses committed on or after October 1, 1998.

²³ Section 921.0022, F.S. Additionally, s. 921.0023, F.S., provides that if an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony.

²⁴ Section 921.0024, F.S. Further, s. 921.0026, F.S., provides that a judge cannot impose a sentence below the lowest permissible sentence unless the judge makes written findings that there are mitigating “circumstances or factors that reasonably justify the downward departure.”

²⁵ Section 921.0042(2), F.S.

²⁶ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, p. 20, (July 1, 2016), available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf (last visited on February 19, 2018).

a third degree felony that is listed in Level 6 of the offense severity ranking chart. Of those sentenced, 224 were sentenced to prison for an average of 27.8 months.²⁷

III. Effect of Proposed Changes:

The bill amends s. 951.22(1), F.S., adding cell phones and other PCDs to the definition of contraband. As a result, the bill expands the third-degree felony offense of introduction of contraband into a county detention facility by applying the criminal penalties to the introduction of a cell phone or PCD.

The bill defines the term for cell phone and PCDs 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 communications in any form. The bill further provides that these devices include, but are not limited to, portable two-way pagers, handheld radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, 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. The bill excludes from this definition any device having communication capabilities that have been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business. This definition mirrors the definition that is found for the introduction of a cell phone or PCD into a state correctional facility.

Additionally, the bill amends s. 921.0022, F.S., specifying that the introduction of contraband into a county facility has a Level 6 ranking in the offense severity ranking chart. Currently, the Level 6 ranking only applies to the introduction of certain types of contraband into a county detention facility.

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ Criminal Justice Impact Conference, Office of Economic and Demographic Research, Narrative Analysis of Adopted Impacts: SB 1886 – Contraband in County Detention Facilities, January 29, 2018.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 29, 2018, and determined that this bill will result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 951.22 and 921.0022.

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.