

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Contraband in County Detention Facilities

SPONSOR(S): Sullivan

TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N	Bruno	Sumner
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

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

Only the definition of contraband that pertains to state correctional institutions includes cellular telephones or other portable communication devices. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate any phones discovered and discipline inmates on those grounds. However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how cell phones enter the facility.

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which similarly prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent.

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for prison and jail beds.

The bill provides an effective date of October 1, 2018.

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 reporting 38,179 cell phones and accessories discovered in its facilities from 2014 to November 2017.¹ 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.² Cell phone use in county detention facilities poses similar risks. 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.

Florida law prohibits introduction of contraband into state correctional institutions,³ county detention facilities,⁴ and juvenile detention facilities or commitment programs.⁵ Introduction of contraband is either a second or third degree felony,⁶ depending on the type of contraband introduced and the facility.⁷ Contraband, which includes items that may pose a safety concern, is defined differently for each facility. In a state correctional institution, contraband includes:

- Any written or recorded communication or any currency or coin.
- Any article of food or clothing.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any controlled substance as defined in s. 893.02(4), F.S., or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive substance.
- Any cellular telephone or other portable communication device 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.⁸

In a county detention facility, contraband includes:

- Any written or recorded communication.
- Any currency or coin.
- Any article of food or clothing.
- Any tobacco products, cigarette, or cigar.
- Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
- Any 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).
- Any firearm or any instrumentality customarily used or which is intended to be used as a dangerous weapon.

¹ Jason Kelly, *9 Investigates: Records show increase in confiscation of cellphones in Florida prisons*, WFTV, (November 2, 2017) available at: <http://www.wftv.com/news/9-investigates/9-investigates-records-show-increase-in-confiscation-of-cellphones-in-florida-prisons/637065013> (last viewed January 1, 2018).

² 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 viewed January 2, 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 viewed January 2, 2018).

³ S. 944.47, F.S.

⁴ S. 951.22, F.S.

⁵ S. 985.711, F.S.

⁶ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. 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 & 775.083.

⁷ SS. 944.47(2), 951.22(2), & 985.711(2), F.S.

⁸ S. 944.47, F.S.

- 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 a county facility.⁹

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

- Any unauthorized article of food or clothing.
- Any intoxicating beverage or any beverage that causes or may cause an intoxicating effect.
- Any controlled substance, as defined in s. 893.02(3), F.S., or any prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- Any firearm or weapon of any kind or any explosive device.

Cellular telephones or other portable electronic devices are only criminalized as contraband in state correctional institutions. County detention facilities may prohibit cellular telephones by internal rule, allowing officers to confiscate phones and discipline inmates on those grounds.¹⁰ However, law enforcement can neither criminally charge a person for having a cell phone in a county detention facility nor fully investigate how cell phones enter the facility.¹¹

Effect of Proposed Changes

HB 733 adds cellular telephones and other portable communication devices to the definition of contraband in a county detention facility. The definition is similar to the definition of contraband in a state correctional institution, which similarly prohibits any cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of the facility without prior authorization or consent. The bill makes introducing a cell phone or other portable communication device into a county detention facility a third degree felony.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

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

Section 2: Amending s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3: Providing an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for prison beds.

⁹ S. 951.22, F.S.

¹⁰ 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 (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).

¹¹ 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 another independent crime.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill criminalizes introduction of a cellular phone or portable communication device in a county detention facility, which could increase the need for jail beds.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES