

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/HB 49 Incarcerated Women
SPONSOR(S): Criminal Justice Subcommittee, Jones and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	11 Y, 0 N	Smith	Gusky
3) Judiciary Committee	18 Y, 0 N	Padgett	Poche

FINAL HOUSE FLOOR ACTION: 114 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 49 passed the House on April 24, 2019. The bill was amended in the Senate on April 26, 2019 and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2019.

The Department of Corrections (DOC), Department of Juvenile Justice (DJJ), and county detention facilities are responsible for the health and safety of the inmates incarcerated within their facilities. DOC, DJJ, and county detention facilities currently provide various health and comfort items to inmates such as toothpaste, soap, shaving supplies, and feminine hygiene products. These facilities also have restrictions on the level of interaction a male correctional officer can have with a female inmate and restrictions on a male correctional officer searching a female inmate.

The bill requires correctional facilities to make the following products available to an incarcerated woman in appropriate quantities at no cost:

- Feminine hygiene products, including tampons;
- Moisturizing soap that is not lye-based;
- Toothbrushes;
- Toothpaste; and
- Any other healthcare product the correctional facility deems appropriate.

Subject to specified exceptions relating to safety and security, the bill prohibits a male correctional employee from:

- Conducting a pat-down search or body cavity search on an incarcerated woman;
- Entering a housing unit for incarcerated women without announcing his presence; and
- Entering into an area where an incarcerated woman may be in a state of undress or viewed in a state of undress.

The bill does not appear to have a fiscal impact on state government. The bill may have a negative fiscal impact on local governments if county detention facilities are not providing the healthcare items required by the bill or are required to hire additional correctional employees to comply with the provisions of the bill.

The bill was approved by the Governor on June 7, 2019, ch. 2019-65, L.O.F., and will become effective on July 1, 2019.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Department of Corrections

The Department of Corrections (DOC) is responsible for providing health and comfort items to inmates.¹ By rule, the following items are issued to indigent prisoners at no cost:²

- Toothbrushes;
- Toothpaste;
- Disposable razors;
- Bath soap;
- Toilet paper; and
- Feminine hygiene products.

Other health and comfort items are also available for purchase through inmate canteens.

DOC is also responsible for protecting the rights of inmates and ensuring inmate safety through its rules and procedures.³ A search of a female inmate must be conducted in the following manner:

- Clothed (pat-down): must be conducted by a female unless there is an emergency situation where a female corrections officer is not available and there is an imminent threat of physical violence to staff or inmates.⁴
- Strip search: must be conducted by a female correctional officer, except in emergency circumstances.⁵
- Body cavity search: must be conducted by a physician or designated member of the health services staff.⁶ A supervisor or ranking officer of the same sex must be physically present during the body cavity search.⁷ Complete documentation of the body cavity search must be submitted to the warden of the correctional facility.⁸

DOC procedure requires staff of the opposite gender to announce at the beginning of each shift that they will be present in a housing unit. Procedure also prohibits a correctional officer from supervising inmates of the opposite gender while inmates are showering or in the restroom area unless appropriate screening is provided.

Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) has the authority to adopt rules necessary to ensure the provision of health services and ordinary medical care to youth incarcerated in its facilities.⁹ DJJ supplies, at a minimum, the following:¹⁰

- Toothbrush and toothpaste;
- Soap;

¹ S. 944.09(1), F.S.

² R. 33-602.101, F.A.C.

³ Ss. 944.09(1)(a) and 944.09(1)(e), F.S.

⁴ R. 33-602.204(1)(a), F.A.C.

⁵ R. 33-602.204(2)(a), F.A.C.

⁶ R. 33-602.204(3)(c)8., F.A.C.

⁷ R. 33-602.204(3)(c)7., F.A.C.

⁸ R. 33-602.204(3)(c)12., F.A.C.

⁹ S. 985.64(2), F.S.

¹⁰ R. 63E-7.007, F.A.C.

- Shampoo;
- Combs or brushes;
- Shaving supplies;
- Body lotion; and
- Feminine hygiene products.

DJJ requires a search of a female youth to be conducted in the following manner:¹¹

- Clothed (pat-down): must be conducted by a female staff member.
- Strip search: must be conducted by a female staff member under observation of another female staff member.
- Body cavity search: there is no gender requirement, but must be conducted by trained medical personnel in a hospital setting. Detention staff are prohibited from conducting body cavity searches.

County Detention Facilities

The Florida Model Jail Standards (FMJS) outline the minimum standards a county detention facility must meet to ensure the constitutional rights of the incarcerated are upheld.¹² The FMJS requires the following items be provided to inmates:¹³

- Toothpaste;
- Toothbrush;
- Comb;
- Soap;
- Clean towel; and
- Feminine hygiene products.¹⁴

The FMJS requires a county detention facility to meet the following standards for housing female inmates:

- A female correctional officer must be on duty at all times when the facility houses a female inmate.¹⁵
- Female inmates must be separated by sight and sound from male inmates.¹⁶
- A female employee must process female inmates.¹⁷
- A strip-search must be conducted by a female.¹⁸
- A body-cavity search must be conducted by licensed medical personnel.¹⁹

Effect of the Bill

Healthcare Products

CS/HB 49 requires a DOC, DJJ, or county detention facility to provide the following healthcare products at no cost to each incarcerated woman:

- Feminine hygiene products, including tampons;

¹¹ R. 63G-2.019, F.A.C.

¹² Florida Sheriff's Association, *Florida Model Jail Standards, What is FMJS?*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited Apr. 30, 2019).

¹³ FMJS r. 5.6.

¹⁴ FMJS r. 5.8.

¹⁵ FMJS r. 5.1.

¹⁶ FMJS r. 5.2.

¹⁷ FMJS r. 4.6.

¹⁸ FMJS r. 4.3a.

¹⁹ FMJS r. 4.3b.

- Moisturizing soap that is not lye-based;
- Toothbrushes;
- Toothpaste; and
- Any other healthcare product the correctional facility deems appropriate.

The bill prohibits a correctional facility from requiring an incarcerated woman to be diagnosed with an illness to access such healthcare items and requires that healthcare items be available both in common areas and in medical care facilities within the correctional facility.

Male Correctional Facility Employees

The bill prohibits a male correctional facility employee from conducting a pat-down search or body cavity search on an incarcerated woman unless the woman presents an immediate risk of harm to herself or others and a female correctional employee is not available. The bill requires a male correctional facility employee to announce his presence upon entering a unit which houses incarcerated women and prohibits a male correctional facility employee from entering an area of a correctional facility where an incarcerated woman may be in a state of undress, unless an incarcerated woman is suffering a medical emergency or presents an immediate risk of harm to herself or others. A male correctional employee who conducts a pat-down or body cavity search on an incarcerated woman or enters into an area where incarcerated women may be in a state of undress is required to document the incident no later than three days after the incident. The correctional facility is required to review and retain the documentation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DOC and DJJ currently provide or are scheduled to provide the healthcare products required by the bill to women incarcerated at their facilities at no cost. Both agencies report that they already comply with the requirements listed in the bill for male correctional facility employees. Thus, the bill should not have a fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent county detention facilities are not providing the healthcare products required by the bill free of charge, the bill may result in a negative fiscal impact to local governments. If county detention facilities require increased staffing or resources as a result of the female search requirements and restrictions on areas where male employees are permitted within a detention facility, the bill may result in a negative fiscal impact to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.