

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: SPB 7046

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Critical Infrastructure Facilities and Staff

DATE: February 18, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cox	Jones		Pre-meeting

I. Summary:

SPB 7046 amends various statutes to address security and staffing concerns found within critical infrastructure facilities. The bill prohibits the use of drones in close proximity to a:

- State correctional institution or a private correctional facility; and
- Secure juvenile detention center or facility, a nonsecure residential facility, a high-risk residential facility, or a maximum-risk residential facility.

The bill also lowers the minimum age for employment as a correctional officer from 19 years of age to 18 years of age.

The bill also reenacts a number of sections relating to employment qualifications for certain officers to incorporate the changes made by the act to s. 943.13, F.S.

The bill does not appear to affect state revenues or expenditures.

The bill is effective July 1, 2019.

II. Present Situation:

Protection of Critical Infrastructure Facilities in Florida from Drone Traffic

A drone, also called Unmanned Aerial Vehicle (UAV) and Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.¹

¹ Section 934.50(2), F.S.

Drones range in size from wingspans of 6 inches to 246 feet and can weigh from approximately 4 ounces to over 25,600 pounds.² They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.³ Drones can be equipped with infrared cameras,⁴ and "LADAR" (laser radar).⁵ In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Section 330.41, F.S., protects critical infrastructure facilities by prohibiting any person from knowingly or willfully:

- Operating a drone over a critical infrastructure facility, unless the drone is in transit for commercial purposes and is in compliance with Federal Aviation Administration (FAA) regulations;
- Allowing a drone to make contact with a critical infrastructure facility, including any person or object on the premises of or within the facility; or
- Allowing a drone to come within a distance of a critical infrastructure facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

"Critical infrastructure facility" means any of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs which indicate that entry is forbidden and which are posted on the property in a manner reasonably likely to come to the attention of intruders:

- An electrical power generation or transmission facility, substation, switching station, or electrical control center.
- A chemical or rubber manufacturing or storage facility.
- A mining facility.
- A natural gas or compressed gas compressor station, storage facility, or natural gas or compressed gas pipeline.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more. Any portion of an aboveground oil or gas pipeline.

² Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, 14 CFR Part 91, Docket No. FAA-2006-25714, February 6, 2007.

³ *Id.*

⁴ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. Congressional Research Service, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited February 13, 2019); Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. Spire Drones, *Best Infrared Drones (Buying Guide)*, available at <https://buythebestdrone.com/best-infrared-drones/> (last visited February 13, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, available at <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last visited February 13, 2019).

⁶ Clay Dillow, Popular Science, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, available at pops.ci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind (last visited February 13, 2019).

- A wireless communications facility, including tower, antennae, support structures, and all associated ground-based equipment.⁷

A first violation of this prohibition is a second degree misdemeanor⁸ and a second or subsequent violation is a first degree misdemeanor.⁹

The prohibition does not apply to prohibited actions which are committed by:

- A federal, state, or other governmental entity, or a person under contract or otherwise acting under the direction of a federal, state, or other governmental entity;
- A law enforcement agency that is in compliance with s. 934.50, F.S., or a person under contract with or otherwise acting under the direction of such law enforcement agency; or
- An owner, operator, or occupant of the critical infrastructure facility, or a person who has prior written consent of such owner, operator, or occupant.¹⁰

Additionally, the prohibition against operating a drone over a critical infrastructure facility does not apply to a drone operating in transit for commercial purposes in compliance with FAA regulations, authorizations, or exemptions.¹¹

Preemption and Construction

In February 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.¹² The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.¹³

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.¹⁴ The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.¹⁵

Additionally, s. 330.41(3)(a), F.S., preempts regulation of the operation of drones to the state except as provided in federal regulations, authorizations, or exemptions.¹⁶ However, the statute

⁷ Section 33.41(2)(a), F.S.

⁸ A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

⁹ Section 330.41, F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

¹⁰ Section 330.41(4)(c), F.S.

¹¹ Section 330.41(4)(d), F.S.

¹² Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; Congressional Research Service, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf (last visited February 13, 2019).

¹³ 14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183, *Operation and Certification of Small Unmanned Aircraft Systems*, 81 FR 42064-01, June 28, 2016.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ "Except as otherwise expressly provided, a political subdivision may not enact or enforce an ordinance or resolution relating to the design, manufacture, testing, maintenance, licensing, registration, certification, or operation of an unmanned

does not limit the authority of a local government to enact or enforce local ordinances relating to nuisances, voyeurism, harassment, reckless endangerment, property damage, or other illegal acts arising from the use of drones if such laws or ordinances are not specifically related to the use of a drone for those illegal acts.¹⁷

Section 330.41(4), F.S., relating to protecting critical infrastructure facilities, sunsets 60 days after the FAA process for designating critical infrastructure becomes effective.¹⁸ Section 330.41, F.S., must be construed in accordance with standards imposed by federal statutes, regulations, and FAA guidance on UAS.¹⁹

Introduction of Contraband into State Facilities

At least ten states have passed laws limiting drone operation near prisons.²⁰ The legislation is likely a response to incidents that have been reported across the country of drones being used to drop contraband into prison yards.²¹ The DOC asserts that the threat of the use of drones to introduce contraband into prison facilities is a major concern. The DOC also reports that smaller items such as cell phones, illegal drugs, and tobacco can be easily carried by the inexpensive smaller drones sold at many retail stores and large items, such as guns, ammunition, and other weapons, are increasingly more likely to be introduced to a facility with drones becoming more and more capable, affordable, and available. The DOC began tracking drone sightings over the DOC facilities in late 2016 with the first reported sighting on December 26, 2016. Since the initiation of tracking, the DOC reports that there have been 38 total reported incidents of drone sightings, some of which contain multiple drones sighted.²²

It is a felony offense in Florida to introduce contraband into or upon the grounds of a state correctional institution, a juvenile detention facility or commitment program, or a county detention facility.²³

Florida Statutes define the following state facilities:

- *State correctional institution* means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or

aircraft system, including airspace, altitude, flight paths, equipment or technology requirements; the purpose of operations; and pilot, operator, or observer qualifications, training, and certification.” Section 330.41(3)(b), F.S.

¹⁷ Section 330.41(3)(c), F.S.

¹⁸ Section 330.41(4)(e), F.S. The FAA has not yet adopted a process for designating critical infrastructure facilities.

¹⁹ Section 330.41(5), F.S.

²⁰ National Conference of State Legislatures, *2017 Unmanned Aircraft Systems (UAS) State Legislation Update*, available at <http://www.ncsl.org/research/transportation/2017-unmanned-aircraft-systems-uas-state-legislation-update.aspx> (last visited February 13, 2019).

²¹ *Drones pose security threat at the nation’s prisons and what Pa. officials want to do about it*, PennLive, July 26, 2017, available at http://www.pennlive.com/politics/index.ssf/2017/07/drones_pose_security_threat_at.html (last visited February 13, 2019).

²² The DOC, *SPB 7046 Agency Analysis*, February 15, 2019, p. 2 (hereinafter cited as “The DOC SPB 7046 Analysis”) (on file with the Criminal Justice Committee). See also The DOC, Office of Institutions, Bureau of Security, *Drone Threat to FDC Facilities Background Information*, p. 1-5 (on file with the Criminal Justice Committee). The DOC provided statistics for various contraband recovered in the last Fiscal Year, including 9,009 cell phones, 11,910 weapons, approximately 51,000 grams of various drugs, and 809,198 grams of tobacco were recovered in facilities during Fiscal Year 2017-18.

²³ Sections 944.47, 985.711, and 951.22, F.S.

permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.²⁴

- *Privatized prisons* are authorized by ch. 957, F.S. The Department of Management Services contracts with private businesses who will establish cost-effective, privately operated correctional facilities in the State of Florida.²⁵
- *Detention center or facility* means a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents shall not be considered a detention center or facility.²⁶
- *Nonsecure residential facilities* are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors. Youth assessed and classified for placement in programs at this commitment level represent a low or moderate risk to public safety and require close supervision.²⁷
- *High-risk residential facilities* are hardware-secure with perimeter fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a structured residential setting. Placement in programs at this level is prompted by a concern for public safety that outweighs placement in programs at lower commitment levels.²⁸
- *Maximum-risk residential facilities* are maximum-custody, hardware-secure with perimeter security fencing and locking doors. Youth assessed and classified for this level of placement require close supervision in a maximum security residential setting. Placement in a program at this level is prompted by a demonstrated need to protect the public.²⁹
- *County detention facility* means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.³⁰

Employment Qualifications for Certain Officers in Specified Facilities

The Criminal Justice Standards and Training Commission (Commission), which is housed within the Florida Department of Law Enforcement (FDLE) is, in part, responsible for implementing

²⁴ Section 944.02(8), F.S.

²⁵ Section 957.04(1)(e), F.S. Currently there are seven private prison facilities housing approximately 10,000 inmates in operation in Florida. The Department of Corrections, *2017-18 Annual Report*, p. 3 and 7, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf (last visited February 14, 2019).

²⁶ Section 985.03(19), F.S.

²⁷ Section 985.03(44)(b), F.S.

²⁸ Section 985.03(44)(c), F.S.

²⁹ Section 985.03(44)(d), F.S.

³⁰ Section 951.23(1)(a), F.S.

requirements related to the training, certification, and discipline of full-time, part-time,³¹ and auxiliary³² correctional officers.³³

Section 943.10(2), F.S., defines “correctional officer” to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term “correctional officer” does not include any secretarial, clerical, or professionally trained personnel.³⁴

Section 943.13, F.S., provides that, to be eligible to be employed as a correctional officer, the person must:

- Be at least 19 years of age;
- Be a citizen of the United States, notwithstanding any law of the state to the contrary;
- Be a high school graduate or its equivalent;³⁵
- Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;³⁶
- Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections (DOC) or the Commission;³⁷

³¹ Section 943.10(7), F.S., defines “part-time correctional officer” to mean any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

³² Section 943.10(9), F.S., defines “auxiliary correctional officer” to mean any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

³³ Correctional officers are eligible for special risk class benefits in accordance with s. 121.0515, F.S. Special risk class membership awards more retirement credit per year of service than is awarded to other employees due to the increased risk that such employees undertake as a part of their duties. Membership of correctional officers in the special risk class is determined by whether the officer’s primary duties and responsibilities involve the custody of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or whether the officer is the supervisor or command officer of a member or members who have such responsibilities. Section 121.0515(1) and (3)(c), F.S.

³⁴ Section 943.10(2), F.S.

³⁵ Section 943.13(3), F.S., provides that the Commission must define the term high school equivalency in rule.

³⁶ Section 943.13(4), F.S., further specifies that: a. Any person who, after July 1, 1981, pleads guilty or nolo contendere to or is found guilty of any felony or of a misdemeanor involving perjury or a false statement is not eligible for employment or appointment as an officer, notwithstanding suspension of sentence or withholding of adjudication; and b. Any person who has pled nolo contendere to a misdemeanor involving a false statement, prior to December 1, 1985, and has had such record sealed or expunged shall not be deemed ineligible for employment or appointment as an officer.

³⁷ Section 943.13(5), F.S., provides that the FDLE must retain and enter into the statewide automated biometric identification system all fingerprints submitted. Thereafter, the fingerprints must be available for all purposes and uses authorized for arrest fingerprints entered in the statewide automated biometric identification system pursuant to s. 943.051, F.S. The FDLE is also required to search all arrest fingerprints received pursuant to s. 943.051, F.S., against the fingerprints retained in the statewide automated biometric identification system in accordance with s. 943.13, F.S., and report to the employing agency any arrest records that are identified with the retained employee’s fingerprints. These fingerprints must be forwarded to the FDLE for processing and retention.

- Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the Commission;
- Have a good moral character as determined by a background investigation by the Commission;
- Execute and submit a sworn affidavit-of-applicant form attesting to his or her compliance with the above-listed requirements to the employing agency or, if a private correctional officer, submit to the appropriate governmental entity;
- Complete a Commission approved basic recruit training program for the applicable criminal justice discipline, unless exempt under law;³⁸ and
- Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline.

If a critical need for officers exists, the employing agency may temporarily employ a person as a correctional officer, if he or she has met all the requirements listed above, even if he or she has not completed basic recruit school or received an acceptable score on the certification examination.³⁹ Any person employed as a temporary correctional officer must be supervised by another correctional officer anytime he or she is performing any duties of a correctional officer and must attend the first basic recruit training program offered in the geographic area within 180 consecutive days of employment.⁴⁰ A person temporarily employed as a correctional officer is prohibited from being employed in the position for more than 30 months. However, a person that is attending the first available basic recruit training program offered in his or her geographic area may continue to be employed as a temporary correctional officer until he or she:

- Fails or withdraws from the basic recruit training program; or
- Is separated from employment or appointment by the employing agency.⁴¹

Any person employed as a correctional officer, regardless of age, must comply with all the above-described eligibility criteria and any other requirements imposed by the Commission, including such requirements as continuing education requirements proscribed in s. 943.135, F.S.

The DOC reports that 23 states permit 18 year olds to be employed as correctional officers.⁴²

³⁸ Section 943.13(9), F.S., provides an exemption for an applicant to be required to take the basic recruit training program, including that if the applicant has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year. For the exemption to be available, the applicant cannot have more than an 8-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for the exemption.

³⁹ Section 943.131(1)(a), F.S.

⁴⁰ Section 943.131(1)(a) and (c), F.S.

⁴¹ Section 943.131(1)(b), F.S.

⁴² The DOC SPB 7046 Analysis, p. 2. The DOC reported in its agency analysis for SB 854 (2017), which included this identical provision, that these states include Arkansas, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Jersey, New Mexico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The DOC, *Senate Bill 854 (2017) Analysis*, at p. 2, (September 19, 2017) (on file with the Senate Committee on Criminal Justice).

III. Effect of Proposed Changes:

Drones and Critical Infrastructure Facilities

The bill amends s. 330.41(2)(a), F.S., to include the following structures within the definition of the term “critical infrastructure facility”:

- A state correctional institution as defined in s. 944.02, F.S., and a private prison as authorized in ch. 957, F.S.
- A secure juvenile detention center as defined in s. 985.03(45), F.S., or facility, nonsecure residential facility, high-risk residential facility, and maximum-risk residential facility as defined in s. 985.03(44), F.S.

This change will serve as another tool to combat the introduction of contraband into facilities through the use of drones.

Minimum Age Requirement for Correctional Officers in Critical Infrastructure Facilities

The bill amends s. 943.13, F.S., to reduce the minimum age requirement for correctional officers in state correctional facilities, which are considered critical infrastructure facilities, from 19 years of age to 18 years of age. The bill does not place any limitations on the duties that may be performed by a correctional officer who is younger than 19 years of age.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The regulation of the national airspace and the aircraft that occupy it is a federal matter.⁴³
The FAA Chief Counsel issued a document in 2015 about state and local regulation of

⁴³Congress has vested the FAA with authority to regulate the areas of airspace use, management and efficiency, air traffic control, safety, navigational facilities, and aircraft noise at its source. 49 U.S.C. ss. 40103, 44502, and 44701-44735.

drones in which he said that state and local restrictions affecting UAS operations should be consistent with the extensive federal statutory and regulatory framework in order to “ensure the maintenance of a safe and sound air transportation system and of navigable airspace free from inconsistent restrictions.”⁴⁴ However, given the Chief Counsel’s acknowledgement that “laws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation”⁴⁵ it appears that the bill would not be an encroachment into an area exclusively regulated by the federal government.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the DOC to hire persons who are at least 18 years of age to perform correctional officer functions. To the extent that this bill increases the number of persons the DOC is able to hire, the bill could potentially reduce the current vacancy rate within correctional facilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 930.41 and 943.13.

This bill reenacts the following sections of the Florida Statutes: 943.131, 943.133, 943.137, 943.139, 943.1395, 943.14, 943.17, 943.253, 944.105, 944.714, 945.035, 948.01, 951.063, and 985.644, F.S.

⁴⁴FAA, Office of the Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, available at https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf (last viewed February 4, 2019).

⁴⁵ *Id.*, citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002).

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
