

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7057 PCB CRJ 19-01 Corrections
SPONSOR(S): Criminal Justice Subcommittee, Roach
TIED BILLS: **IDEN./SIM. BILLS:** SB 7046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Bruno	Hall
1) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Gusky
2) Judiciary Committee			

SUMMARY ANALYSIS

A drone is 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. With recent increases in hobbyist drone operation, people have used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities in Florida and across the country. As drones become increasingly prolific and their capabilities advance, this threat will likely grow.

Florida law protects critical infrastructure facilities, such as electric power generation and mining facilities, from dangers associated with drone operation by criminalizing knowingly and willfully:

- Operating a drone over a critical infrastructure facility,
- Allowing a drone to make contact with a critical infrastructure facility, or
- Allowing a drone to come close enough to a critical infrastructure facility as to interfere with the operations of or cause a disturbance to the facility.

HB 7057 amends the definition of “critical infrastructure facility” to include a state or private prison; secure juvenile detention facility; or nonsecure, high-risk, or maximum risk juvenile residential facility.

Correctional officers in Florida are appointed or employed full time by the state or a political subdivision, or by any private entity that has contracted with the state or county, and are tasked with the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution. Correctional officers, law enforcement officers, and correctional probation officers must meet statutory minimum qualifications, including a requirement that officers be at least 19 years old.

The bill addresses growing staffing shortages at the Department of Corrections (DOC) by decreasing the minimum age requirement for a full-time, part-time, or auxiliary correctional officer to 18 years of age. The minimum age requirement for all law enforcement and correctional probation officers remains 19. Decreasing the minimum age requirement expands the pool of eligible persons from which the DOC may recruit to fill its personnel needs.

The Criminal Justice Estimating Conference considered a similar bill on January 8, 2018, and determined the bill would result in a “positive insignificant” state prison bed impact (increase of 10 or fewer beds).

The bill may have an indeterminate, but likely insignificant, fiscal impact on local governments.

The bill has an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drones and Critical Infrastructure Facilities

Background

Under Florida law, a drone is 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 The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).²

In recent years, drone use has increased substantially among hobbyists and commercial users. The Federal Aviation Administration (FAA) forecasts up to seven million annual drone sales by 2020.³ The increase in drone operation presents new public safety challenges. For example, drones have interfered with aerial efforts to extinguish wildfires,⁴ and people have crashed drones near crowds⁵ and on the White House lawn.⁶

People have also used drones to smuggle contraband – including cell phones, drugs, weapons, and escape tools – into correctional facilities in Florida⁷ and across the country.⁸ Recently, the Martin County Sheriff's Office arrested two women on introduction of contraband charges for using a drone to deliver items, including cell phones and tobacco, to the roof of the Martin Correctional Institute.⁹ As drones become increasingly prolific and their capabilities advance, this threat will likely grow.

¹ S. 934.50(2)(a), F.S.

² S. 330.41(2)(c), F.S.

³ Federal Aviation Administration, *FAA Aerospace Forecast: Fiscal Years 2016-2036*, https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2016-36_FAA_Aerospace_Forecast.pdf (last visited Feb. 26, 2019).

⁴ Jennifer Medina, *Chasing Video with Drones, Hobbyists Imperil California Firefighting Efforts*, *New York Times*, (July 19, 2015), <https://www.nytimes.com/2015/07/20/us/hobby-drones-hinder-california-firefighting-efforts.html> (last visited Feb. 26, 2019).

⁵ Associated Press, *Drone hovers over court during match, crashes in Louis Armstrong Stadium*, *ESPN*, (Sept. 4, 2015), http://www.espn.com/tennis/usopen15/story/_/id/13577411/drone-enters-louis-armstrong-stadium-crashes-empty-seats-match (last visited Feb. 26, 2019); Jeff Sanders, *A bird? A plane? No, a drone crash lands at Petco Park*, *San Diego Union-Tribune*, (May 22, 2017), <http://www.sandiegouniontribune.com/sports/padres/sd-sp-drone-crashes-at-petco-park-20170522-story.html> (last visited Feb. 26, 2019); Steve Miletich, *Man convicted in drone crash that injured woman during Seattle's Pride Parade*, *SEATTLE TIMES*, (Jan. 13, 2017), <https://www.seattletimes.com/seattle-news/crime/man-convicted-in-drone-crash-that-injured-woman-during-seattles-pride-parade/> (last visited Feb. 26, 2019).

⁶ Bart Jansen, *Small drone crashes near White House despite ban against flights in D.C.*, *USA Today*, (Oct. 9, 2015), <https://www.usatoday.com/story/news/2015/10/09/drone-crash-white-house-ellipse-us-park-police-federal-aviation-administration/73641812/> (last visited Feb. 26, 2019).

⁷ Emma Kennedy, *FDC investigates after drone drops contraband at Panhandle prison*, *Pensacola News Journal* (Mar. 24, 2018), <https://www.pnj.com/story/news/crime/2018/03/24/fdc-investigates-after-drone-drops-contraband-panhandle-prison/452463002/> (last visited Feb. 26, 2019);

⁸ Terell Wilkins, *Drone carrying drugs, phones crashes into prison yard*, *USA Today*, (Nov. 17, 2017), <https://www.usatoday.com/story/news/nation-now/2017/11/17/drone-carrying-contraband-crashes-prison-yard/873557001/> (last visited Feb. 26, 2019); Michael Gerstein, *Drone sneaks package into Michigan Prison*, *The Detroit News*, (Oct. 1, 2017), <http://www.detroitnews.com/story/news/local/michigan/2017/10/01/report-drone-sneaks-contraband-prison/106224348/> (last visited Feb. 26, 2019); Randy Ludlow, *Drone drops drugs, tobacco in Mansfield prison yard, spurs fight*, *The Columbus Dispatch*, (Aug. 4, 2015), <http://www.dispatch.com/content/stories/local/2015/08/04/drone-drops-drugs-in-ohio-prison-yard.html> (last visited Feb. 26, 2019).

⁹ Julia Jacobo and Rachel Katz, *Mother, daughter arrested for using a drone to deliver contraband to prison rooftop*, *ABC News* (Dec. 18, 2018), <https://abcnews.go.com/US/mother-daughter-arrested-drone-deliver-contraband-prison-roof/story?id=59894154> (last visited Feb. 26, 2019).

Federal Drone Regulation

The FAA regulates use of navigable airspace under federal law.¹⁰ The FAA has allowed drone use for essential public operations such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, and scientific research since 1990.¹¹ In 2012, the United States Congress directed the Secretary of the United States Department of Transportation to determine whether to allow other drone operations in the national airspace system and, if so, to establish safety requirements.¹² Consequently, the FAA introduced regulations to facilitate civilian drone use in the navigable airspace.¹³

In 2016, Congress enacted the FAA Extension, Safety, and Security Act (FAAESSA),¹⁴ which directed the FAA to establish a process for applicants to petition the Administrator of the FAA for a designation to prohibit or restrict drone operation in close proximity to a fixed site facility. FAAESSA limits fixed site facilities to:

- Critical infrastructure, such as energy production, transmission, and distribution facilities and equipment,
- Oil refineries and chemical facilities,
- Amusement parks, or
- Other locations that warrant such restrictions.

As of February 2019, the FAA has not established the process by which entities may apply for a designation prohibiting or restricting drone operations in close proximity to fixed site facilities.

The FAA for the first time restricted drone operation over several federal prisons in June 2018,¹⁵ pursuant to its national security authority to issue special security instructions.¹⁶ In February 2019, the FAA expanded the list of federal prisons over which drone operation is restricted.¹⁷ Ten states currently prohibit drone operation over or near a state prison: Arizona, Louisiana, Nevada, New Jersey, North Carolina, Oregon, South Dakota, Tennessee, Texas, and Wisconsin.¹⁸ The FAA has expressed concerns about state and local government attempts to regulate flight and aircraft.¹⁹ According to the FAA, these efforts raise substantial safety issues by fractionalizing the national airspace and thereby limiting the flexibility of the FAA to control the airspace and flight patterns.²⁰

State Drone Regulation

In Florida, the regulation of drones is preempted to the state; political subdivisions cannot enforce ordinances or resolutions impacting drones.²¹ Political subdivisions may continue to enforce 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

¹⁰ 49 U.S.C. § 40103.

¹¹ Federal Aviation Administration, *Fact Sheet – Unmanned Aircraft Systems* (Feb. 15, 2015), https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Feb. 26, 2019).

¹² Pub. L. No. 112-95.

¹³ Federal Aviation Administration, *Press Release – DOT and FAA Propose New Rules for Small Unmanned Aircraft Systems*, (February 15, 2015), https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18295 (last visited Feb. 26, 2019).

¹⁴ Pub. L. No. 114-190, § 2209.

¹⁵ Federal Aviation Administration, *FAA Establishes Restrictions on Drone Operations over DOJ and USCG Facilities* (Jun. 7, 2018), <https://www.faa.gov/news/updates/?newsId=90545&cid=TW665> (last visited Feb. 26, 2019).

¹⁶ 14 C.F.R. § 99.7.

¹⁷ Federal Aviation Administration, *FAA Establishes Restrictions on Drone Operations over DOJ and DOD Facilities* (Feb. 14, 2019), <https://www.faa.gov/news/updates/?newsId=93048> (last visited Feb. 26, 2019).

¹⁸ National Conference of State Legislatures, *2017 Unmanned Aircraft Systems (UAS) State Legislation Update*, <http://www.ncsl.org/research/transportation/2017-unmanned-aircraft-systems-uas-state-legislation-update.aspx> (last visited Feb. 26, 2019).

¹⁹ Federal Aviation Administration, Office of Chief Counsel, *State and Local Regulation of Unmanned Aircraft Systems Fact Sheet* (Dec. 17, 2015), https://www.faa.gov/uas/resources/policy_library/media/UAS_Fact_Sheet_Final.pdf (last visited Feb. 26, 2019).

²⁰ *Id.*

²¹ S. 330.41(3), F.S.

use of drones for those illegal acts.²² Florida law specifies that a person or governmental entity may petition the FAA to restrict the operation of drones over facilities that the person or government entity owns.²³

Protection of Critical Infrastructure Facilities

Florida law protects critical infrastructure facilities from dangers associated with drone operation by criminalizing knowingly and willfully:

- Operating a drone over a critical infrastructure facility;
- Allowing a drone to make contact with a critical infrastructure facility; or
- Allowing a drone to come close enough to a critical infrastructure facility as to interfere with the operations of or cause a disturbance to the facility.²⁴

A critical infrastructure facility is:

- 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 or 4,000 gallons or more,
- Any portion of an aboveground oil or gas pipeline, or
- A wireless communications facility, including the tower, antennae, support structures, and all associated ground-based equipment.²⁵

A first time violation of the prohibition is a second degree misdemeanor;²⁶ a second or subsequent violation is a first degree misdemeanor.²⁷ According to the Florida Department of Law Enforcement's Statistical Analysis Center, there is one arrest for unlawful operation of a drone over, in contact with, or near a critical infrastructure facility in the Computerized Criminal History database.²⁸

Anyone seeking to restrict or limit the operation of drones in close proximity to infrastructure or facilities must petition the FAA for the proper designation under the FAAESSA, once such designation process goes into effect.²⁹ The criminalization of drone operation over or near critical infrastructure facilities sunsets 60 days after the FAA establishes the designation process directed under the FAAESSA.³⁰

Other Relevant State Law

Florida law prohibits introducing of contraband into state correctional institutions,³¹ county detention facilities,³² and juvenile detention facilities or commitment programs.³³ Depending on the facility type, contraband may include written or recorded communication, money, food, clothing, tobacco, cigarettes and cigars, intoxicating beverages, controlled substances, firearms, weapons, explosive substances,

²² *Id.*

²³ *Id.*

²⁴ S. 330.41(4)(a), F.S.

²⁵ S. 330.41(2)(a), F.S.

²⁶ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

²⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,500 fine. Ss. 775.082 and 775.083.

²⁸ Email from Ron Draa, Legislative Affairs Director, Florida Department of Law Enforcement, FW: Drone operation over critical infrastructure facilities (Feb. 26, 2019).

²⁹ S. 330.41(3)(d), F.S.

³⁰ S. 330.41(4)(e), F.S.

³¹ S. 944.47, F.S.

³² S. 951.22, F.S.

³³ S. 985.711, F.S.

instrumentalities of escape, cellular telephones, and other portable communication devices.³⁴ Introducing contraband into a state correctional institution or juvenile detention facility can be either a third or second degree felony,³⁵ depending on the type of contraband introduced,³⁶ whereas introducing contraband into a county detention facility is a third degree felony.

Effect of Proposed Changes

HB 7057 amends the definition of “critical infrastructure facility” to include a:

- State correctional institution.
- Private correctional facility.
- Secure juvenile detention center or facility.
- Nonsecure, high-risk, or maximum-risk juvenile residential facility.

The bill maintains the prohibition against operating a drone over, near, or in contact with a critical infrastructure facility, thus criminalizing drone operation over, near, or in contact with a prison or specified juvenile facility. A first time violation is a second degree misdemeanor;³⁷ a second or subsequent violation is a first degree misdemeanor.³⁸ A person who uses a drone to introduce contraband into a state or private correctional facility or juvenile facility is criminally liable for a felony charge of introducing contraband and a misdemeanor charge of operating a drone over a critical infrastructure facility.

The bill leaves the sunset provision of s. 330.41, F.S., intact. Once the FAA establishes the designation process under the FAAESSA, the criminal provisions of the bill will be repealed 60 days thereafter.

Correctional Officer Age Requirements

Background

Correctional officers in Florida are appointed or employed full time by the state or a political subdivision, or by any private entity that has contracted with the state or county, and are tasked with the supervision, protection, care, custody, and control, or investigation of inmates within a correctional institution.³⁹ Correctional officers, law enforcement officers, and correctional probation officers must meet minimum qualifications, including a requirement that officers be at least 19 years old.⁴⁰

The Florida Department of Corrections (DOC) has experienced growing staffing shortages over the past several years.⁴¹ From 2006 to 2015, the number of correctional officers relative to the average daily inmate population significantly decreased.⁴² In June 2006, DOC reported 12,099 filled correctional officer positions and 554 vacancies; in June 2015, DOC reported 10,973 filled correctional officer positions and 720 vacancies.⁴³ The inmate population grew over the same time period from 88,576 on June 30, 2006,⁴⁴ to 100,050 on June 30, 2015.⁴⁵ Thus, by June 2015, both the total number of

³⁴ Ss. 944.47(1)(a), F.S., 951.22(1), F.S., and 985.711(1)(a), F.S.

³⁵ 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 and 775.083, F.S.

³⁶ Ss. 944.47(2) and 985.711(2), F.S.

³⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 and 775.083, F.S.

³⁸ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³⁹ S. 943.10(2), F.S.

⁴⁰ S. 943.13(1), F.S.

⁴¹ CGL Management Group, *Study of Operations of the Florida Department of Corrections*, p. 10, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/15-FDC.pdf> (last visited Feb. 26, 2019).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

correctional officers and the ratio of correctional officers to inmates had decreased. From the end of 2016 to October 2017, the number of correctional officer vacancies increased by 103%.⁴⁶

A study by the Association of State Correctional Administrators (ASCA)⁴⁷ recommended lowering the applicant eligibility age from 19 to 18 so that DOC could recruit high school seniors in an effort to address some of the staffing shortages.⁴⁸ Eighteen year-olds in Florida are currently eligible to begin employment in comparable career paths. For example, a person may join the military at 17 with parental consent or 18 without parental consent,⁴⁹ and the minimum age qualification for firefighters is 18.⁵⁰ Additionally, several other states allow 18 year-olds to be correctional officers, including Georgia,⁵¹ Texas,⁵² and Kansas.⁵³

Effect of Proposed Changes

The bill decreases the minimum age requirement for a full-time, part-time, or auxiliary correctional officer to 18. The minimum age requirement for all law enforcement and correctional probation officers remains 19. Decreasing the minimum age requirement expands the pool of eligible persons from which the Department of Corrections may recruit to fill its personnel needs.

B. SECTION DIRECTORY:

Section 1: Amends s. 330.41, F.S., relating to Unmanned Aircraft Systems Act.

Section 2: Amends s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.

Section 3: Reenacting s. 943.131, F.S., relating to temporary employment or appointment; minimum recruit training exemptions.

Section 4: Reenacting s. 943.133, F.S., relating to responsibilities of employing agency, commission, and program with respect to compliance with employment qualifications and the conduct of background investigations; injunctive relief.

Section 5: Reenacting s. 943.137, F.S., relating to establishment of qualifications and standards above the minimum.

Section 6: Reenacting s. 943.139, F.S., relating to notice of employment, appointment, or separation; response by the officer; duty of commission.

Section 7: Reenacting s. 943.1395, F.S., relating to certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.

Section 8: Reenacting s. 943.14, F.S., relating to commission-certified criminal justice training schools; certificates and diplomas; exemptions; injunctive relief; fines.

Section 9: Reenacting s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs; participation; cost; evaluation.

Section 10: Reenacting s. 943.253, F.S., relating to exemption; elected officers.

Section 11: Reenacting s. 944.105, F.S., relating to contractual arrangements with private entities for operation and maintenance of correctional facilities and supervision of inmates.

Section 12: Reenacting s. 944.714, F.S., relating to quality assurance and standards of operation.

⁴⁶ Florida Department of Corrections, *Department Institutional Vacancy Reports*, (Dec. 1, 2017).

⁴⁷ DOC contracted ASCA to conduct an independent staffing audit and analysis pursuant to Executive Order 15-134, <https://www.flgov.com/wp-content/uploads/2015/07/DOC-EO.pdf> (last visited Feb. 26, 2019).

⁴⁸ *Id.*

⁴⁹ 10 U.S.C. § 505(a).

⁵⁰ S. 633.412(1), F.S.

⁵¹ Georgia Department of Corrections, *How to Become a GDC Correctional Officer*, <http://www.gdcjobs.com/pdf/CorrectionalOfficerBrochure.pdf> (last visited Feb. 26, 2019).

⁵² Texas Department of Criminal Justice, *Correctional Officer Eligibility Criteria*, <https://www.tdcj.state.tx.us/divisions/hr/coinfo/emp-co.html> (last visited Feb. 26, 2019).

⁵³ Kansas Department of Corrections, *Corrections Officers Qualifications*, <https://www.doc.ks.gov/employment/corrections-officer> (last visited Feb. 26, 2019).

Section 13: Reenacting s. 945.035, F.S., relating to notice of employment, appointment, or separation; response by the correctional officer; duty of department.

Section 14: Reenacting s. 948.01, F.S., relating to when court may place defendant on probation or into community control.

Section 15: Reenacting s. 951.063, F.S., relating to privately operated county correctional facilities.

Section 16: Reenacting s. 985.644, F.S., relating to departmental contracting powers; personnel standards and investigation.

Section 17: Providing an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered a similar bill on January 8, 2018, and determined the bill would result in a “positive insignificant” state prison bed impact (increase of 10 or fewer beds).⁵⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments by criminalizing drone operation over a prison or juvenile facility. This impact is likely to be insignificant, given that there has only been one arrest under the current law.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill permits the Department of Corrections (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 reduce the current vacancy rate within correctional facilities.

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.

⁵⁴ Criminal Justice Impact Conference, *SB 624: Drones (Identical HB 471)*, January 8, 2018, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/archives/2018/SB624.pdf>, (last accessed March 14, 2019).

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES