

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 745 Contraband in Specified Facilities

SPONSOR(S): Criminal Justice Subcommittee, Plakon

TIED BILLS: **IDEN./SIM. BILLS:** SB 1286

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Jones	Gusky
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits introducing contraband into a facility operated by the Department of Children and Families (DCF), a state correctional institution (prison), a county detention facility (jail), or a juvenile detention facility. Contraband is defined differently for each facility and includes both items which are illegal, such as a controlled substance, and items which are legal but are a security threat, such as a cellular phone. The criminal penalty for introducing contraband into a facility varies depending on the facility and the type of contraband and ranges from a first degree misdemeanor to a second degree felony.

Although cannabis remains prohibited under chapter 893, F.S., as a controlled substance, recent changes to both state and federal law have allowed for legal use of products derived from cannabis, such as medical marijuana, hemp, and products containing cannabidiol (CBD). The amendments to chapter 893, F.S., legalizing certain forms of cannabis resulted in these items no longer being listed as prohibited contraband in each of the four types of facilities in the bill. Determining whether a particular type of cannabis is legal is difficult because, in the case of medical marijuana, it is either identical to illicit cannabis or, in the case of hemp, difficult to distinguish without advanced testing.

CS/HB 745 prohibits introducing the following into a DCF facility, state prison, county jail, or juvenile detention facility:

- Medical marijuana, hemp, and industrial hemp, punishable as a second or third degree felony.
- Any vapor-generating electronic device, punishable as a first degree misdemeanor.

The bill adds cellular phones or other portable communication devices to the list of contraband items in DCF facilities and juvenile detention facilities, punishable as a first degree misdemeanor.

The bill provides a first degree misdemeanor penalty for the existing offenses of introducing into a DCF facility an intoxicating beverage or an item designated contraband by DCF rule.

Felony offenses are ranked on the offense severity ranking chart from least severe (level 1) to most severe (level 10). The offense level, combined with other factors such as an offender's prior criminal record, determines the lowest permissible sentence for an offense. The bill ranks the previously unranked offense of introducing a firearm or deadly weapon or a controlled substance under chapter 893, F.S., into a DCF facility as a level four offense.

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on prison beds (an increase of 10 or fewer beds) by expanding the types of prohibited contraband items, the introduction or possession of which is punishable as a criminal offense. Similarly, the bill may have a positive indeterminate impact on county jail beds.

The bill provides an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Introduction of Contraband

Introduction of contraband into government operated secure facilities is a problem that impacts the security of the facility, the security of the public, and the security and physical health of the facility's population. Florida law prohibits introducing contraband into secure facilities operated by the Department of Children and Families (DCF), the Department of Corrections (DOC), a county sheriff, and the Department of Juvenile Justice (DJJ). The criminal penalty for introducing a contraband item varies depending on the type of contraband and the facility.

DCF Facilities

DCF operates facilities which house defendants who have been adjudicated incompetent to proceed or found not guilty by reason of insanity. In a DCF facility, prohibited contraband includes any:

- Intoxicating beverage or beverage which causes or may cause an intoxicating effect;
- Controlled substance as defined in chapter 893, F.S.;
- Firearm or deadly weapon; and
- Item declared contraband by DCF or the Agency for Persons with Disabilities.¹

DOC Institutions (State Prisons)

DOC operates the state correctional system. DOC institutions house inmates who have been convicted of a felony and sentenced to more than one year of imprisonment. In a state correctional institution, prohibited contraband includes any of the following items introduced into or upon the grounds of the institution, except as authorized by the officer in charge of the institution:

- Written or recorded communication;
- 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.,² or any drug having a hypnotic, stimulating, or depressing effect;
- Firearm, weapon, or explosive substance; and
- Cellular phone or other portable communication device.³

County Detention Facilities (County Jails)

Sheriffs operate county detention facilities. County detention facilities house inmates who have been arrested and are awaiting trial as well as inmates who have been convicted and sentenced to less than one year of incarceration. In a county detention facility, prohibited contraband includes any of the following items introduced into or upon the grounds of the facility, except as duly authorized by the sheriff or officer in charge of the facility:

- Written or recorded communication;
- Currency or coin;
- Article of food or clothing;
- Tobacco products, cigarette, or cigar;
- Intoxicating beverage or beverage which causes or may cause an intoxicating effect;

¹ S. 916.1085(1)(a), F.S.

² "Controlled substance" is defined to mean any substance named or described in Schedules I-V of s. 893.03, F.S. Laws controlling the manufacture, distribution, preparation, dispensing, or administration of such substances are drug abuse laws. S. 893.02(4), F.S.

³ S. 944.47, F.S.

- 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 intended to be used as a dangerous weapon;
- Instrumentality that may be used or is intended to be used as an escape aid; and
- Cellular phone or portable communication device.⁴

DJJ Facilities

DJJ operates detention facilities which house juveniles who were arrested for committing a delinquent act pending court adjudication, and commitment programs which house juveniles who have been found by a court to have committed a delinquent act. In a DJJ facility, prohibited contraband includes 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 drug that has a hypnotic, stimulating, or depressing effect; and
- Firearm or weapon of any kind or any explosive device.⁵

Vapor-generating Electronic Devices

Vaping is the act of inhaling and exhaling an aerosol, or vapor, created from a liquid heated inside of a battery-operated electronic device.⁶ There are various types of liquids and electronic devices used in vaping. Examples of vaping devices include vape pens, e-cigarettes, e-hookahs, electronic nicotine delivery devices, tank systems, and mods, all of which generally consist of a mouthpiece, a battery, a cartridge for containing the liquid, and a heating component which turns the liquid into an aerosol.⁷ Some devices are made to look like regular cigarettes, cigars, or pipes, while some are made to resemble pens, USB sticks, or other everyday items.⁸

Controlled Substances - Cannabis

Controlled substances under chapter 893, F.S., are prohibited as contraband in each of the four types of facilities included in the bill. Cannabis is a controlled substance under chapter 893, F.S. However, the legislature amended the definition of “cannabis”⁹ in s. 893.02(3), F.S., to specifically exclude medical marijuana¹⁰ (in 2014), as well as hemp¹¹ and industrial hemp¹² (in 2019). Thus, these items, which are difficult, if not impossible, to distinguish from illegal marijuana, are no longer criminally prohibited contraband.

⁴ S. 951.22, F.S.

⁵ S. 985.711(1), F.S.

⁶ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *About Electronic Cigarettes (E-Cigarettes)*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#what-are-e-cigarettes (last visited January 21, 2020).

⁷ *Id.*

⁸ *Id.*

⁹ “Cannabis” is defined in s. 893.02, F.S., to mean, “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986 F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986 F.S. The term does not include hemp as defined in s. 581.217, F.S., or industrial hemp as defined in s. 1004.4473, F.S. The term does not include a drug product described in s. 893.03(5)(d), F.S. S. 893.02(3), F.S.

¹⁰ Under s. 381.986(1)(f), F.S., “marijuana” is defined to mean all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient. S. 381.986(1)(f), F.S.

¹¹ “Hemp” is defined to mean the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis. S. 581.217(3)(d), F.S.

¹² “Industrial hemp” is defined to mean all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis. S. 1004.4473(1)(c), F.S.

Criminal Punishment Code – Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code¹³ are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe (level 1) to most severe (level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute.¹⁴ A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense.¹⁵ A person may also accumulate points for factors such as victim injury, violating a community sanction, and certain sentencing multipliers.¹⁶ The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.¹⁷

The criminal penalties and offense levels for introducing a controlled substance into a DCF facility, state prison, county jail, or DJJ facility are as follows:

	Felony Degree	Offense Level
DCF Facility	Third ¹⁸	1 ¹⁹
State Prison	Second ²⁰	4 ²¹
County Jail	Third	4
DJJ Facility	Second	4 ²²

Effect of Proposed Changes

CS/HB 745 expands the existing prohibition on contraband controlled substances to include medical marijuana, hemp, and industrial hemp as prohibited contraband. A violation is punishable by the same felony degree and offense level as existing law for introducing a contraband controlled substance.

The bill adds cellular phones or other portable communication devices to the list of prohibited contraband items in a DCF or DJJ facility. The bill makes introducing a cellular phone or other portable communication device into a DCF or DJJ facility a first degree misdemeanor²³.

The bill adds vapor-generating electronic devices²⁴ to the list of prohibited contraband items in a DCF facility, state prison, county detention facility, or DJJ facility. The bill makes introducing a vapor-generating electronic device into a DCF facility, state prison, county detention facility, or DJJ facility a first degree misdemeanor.

The bill provides a first degree misdemeanor penalty for the existing offenses of introducing into a DCF facility an intoxicating beverage or an item designated contraband by DCF rule. The maximum criminal penalty for these offenses was not previously specified.

¹³ All felony offenses, other than capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁴ S. 921.0022, F.S.

¹⁵ Ss. 921.0022 and 921.0024, F.S.

¹⁶ S. 921.0024(2), F.S.

¹⁷ *Id.*

¹⁸ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁹ The offense is unranked and defaults to a level 1 offense. S. 921.0023(1), F.S.

²⁰ 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.

²¹ The offense is unranked and defaults to a level 4 offense. S. 921.0023(2), F.S.

²² *Id.*

²³ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

²⁴ The bill uses the definition of a "vapor-generating electronic device" in s. 386.203, F.S., to mean any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product. S. 386.203(15), F.S.

The bill provides an effective date of October 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 916.1085, F.S., relating to introduction or removal of certain articles unlawful; penalty.

Section 2: Amends s. 944.47, F.S., relating to introduction, removal, or possession of contraband; penalty.

Section 3: Amends s. 951.22, F.S., relating to county detention facilities; contraband articles.

Section 4: Amends s. 985.711, F.S., relating to introduction, removal, or possession of certain articles unlawful; penalty.

Section 5: Amends s. 921.0022, F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

Section 6: Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference considered the bill on January 27, 2020, and determined the bill will have a positive insignificant impact on prison beds (an increase of 10 or fewer beds) by expanding the types of prohibited contraband items, the introduction or possession of which is punishable as a criminal offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive jail bed impact on county detention facilities. Criminalizing the introduction of cellular phones or communication devices and vapor-generating electronic devices into certain types of facilities may increase costs to county detention facilities by increasing jail admissions or sentence lengths.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided a first degree misdemeanor penalty for the existing offenses of introducing into a DCF facility an intoxicating beverage or an item designated contraband by DCF rule.
- Changed the person who may approve introducing a cellular phone or portable communication device into a DCF facility from the sheriff to “the person in charge of the facility.”
- Changed the person who may approve introducing a cellular phone or portable communication device into a Department of Juvenile Justice facility from the sheriff to the facility superintendent, program director, or manager.
- Changed the cross-references defining a vapor-generating electronic device to s. 386.203, F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.