

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1561 County and Municipal Detention Facilities
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Bush and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee	19 Y, 0 N	Padgett	Kramer

SUMMARY ANALYSIS

The Florida Model Jail Standards (FMJS) are minimum standards which county and municipal detention facilities across Florida must meet to ensure that the constitutional rights of those incarcerated are upheld. Section 951.23(4), F.S., establishes a five-member working group to develop model standards for county and municipal detention facilities, including standards related to construction, equipping, maintenance, and operations. Although not required by statute, the FMJS also provide standards for the inspection of county and municipal detention facilities and requirements for correcting violations of the FMJS that are observed during an inspection. However, the FMJS currently does not provide penalties if a county or municipal detention facility fails to correct violations of the FMJS.

CS/HB 1561 amends s. 951.23, F.S., and creates s. 951.2302, F.S., to revise the standards for county and municipal detention facilities by:

- Creating the seven-member FMJS Working Group to develop and maintain the FMJS.
- Specifying membership on the FMJS Working Group must include:
 - Three sheriffs appointed by the Florida Sheriffs Association (FSA).
 - A physician with experience in correctional health care, appointed by the FSA.
 - A county commissioner, appointed by the Florida Association of Counties (FAC).
 - A jail administrator of a county jail operated by a county, appointed by FAC.
 - A psychiatrist with experience in correctional psychiatry, appointed by FAC.
- Requiring every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt the FMJS as approved by the FMJS Working Group.
- Deleting a provision prohibiting the confinement of prisoners awaiting trial with prisoners that have been convicted of a crime.
- Requiring special consideration be given to the appropriate housing of pregnant women.
- Requiring county and municipal detention facilities be inspected twice annually, including one announced inspection and one unannounced inspection.
- Providing time limitations for a county or municipal detention facility to correct violations of the FMJS.
- Providing penalties if a detention facility fails to correct violations of the FMJS.
- Providing penalties if the person in charge of a county or municipal detention facility refuses to allow an inspection or refuses to provide access to the facility.

The bill may have an indeterminate fiscal impact on local governments. The bill creates fines for detention centers that are found to be in violation of the FMJS. Additionally, if a detention facility is required to cease operations for failure to correct a violation, the county or municipality operating the detention facility will be financially liable for the cost of transporting prisoners to a compliant detention facility, and must contract to provide the per diem cost of housing the relocated prisoners.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County and Municipal Detention Facilities

Section 951.23(1)(a), F.S., defines a county detention facility as 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 a felony or a misdemeanor.

Section 951.23(1)(d), F.S., defines a municipal detention facility as a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

Florida Model Jail Standards

The Florida Model Jail Standards (FMJS) are minimum standards which jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld.¹ Section 951.23(4), F.S., establishes a five-member working group to develop standards for county and municipal detention facilities.² The working group is comprised of three members appointed by the Florida Sheriffs Association (FSA) and two members appointed by the Florida Association of Counties (FAC).³

Section 951.23(4), F.S., requires the FMJS developed by the working group to address:

- The construction, equipping, maintenance, and operation of county and municipal detention facilities, including the:
 - Cleanliness and sanitation;
 - Number of prisoners who may be housed per specified unit of floor space;
 - Quality, quantity and supply of bedding furnished to prisoners;
 - Quality, quantity, and diversity of food served and the manner in which food is served;
 - Furnishing of medical attention and health and comfort items; and
 - Disciplinary treatment which may be meted out to prisoners.
- Confinement of prisoners by classification and providing, whenever possible, for classifications that separate males from females, juveniles from adults, felons from misdemeanants, and those awaiting trial from those convicted.
- The separation of special risk prisoners.⁴

County and Municipal Detention Facility Inspections

The inspection process for county and municipal detention facilities for compliance with the FMJS is not provided in statute. However, the FMJS provides standards for inspections and requirements for correcting any violation of the FMJS observed during an inspection. The officer-in-charge⁵ of a county or municipal detention facility must contract with or arrange for a FMJS Certified Inspector to inspect a

¹ Florida Sheriffs Association, *Training*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited Feb. 23, 2022).

² S. 951.23(4)(a), F.S.

³ *Id.*

⁴ Special risk prisoners include the mentally ill, alcohol or narcotic addicts, sex deviates, suicide risks, and any other classification which the sheriff or jail administrator may deem necessary for the safety of the prisoners and the operation of the facility. S. 951.23(4)(a)2., F.S.

⁵ "Officer-in-charge" means the Sheriff, Chief Correctional Officer or any correctional administrator appointed by a City or County Board of Commissioners. Florida Sheriffs Association, *Florida Model Jail Standards*, https://www.flsheriffs.org/uploads/docs/FMJS_Manual_Eff_04_01_21.pdf (last visited Feb. 23, 2022).

facility on at least an annual basis.⁶ The FMJS inspector must report his or her findings to the officer-in-charge within 14 days of the date of the inspection.⁷ If the report indicates one or more violations of FMJS standards, the officer-in-charge must develop a corrective action plan, which specifies the corrective action to be taken, the timetable for such corrective action, and the resources to be used.⁸ The officer-in-charge must forward a copy of the corrective action plan to the FMJS Chairperson within 30 days after receipt of the inspection report.⁹

If an FMJS inspector observes a serious violation,¹⁰ the inspector must immediately notify the officer-in-charge of the facility and prepare a report detailing the serious violation within 24 hours of the time the serious violation was first observed.¹¹ The officer-in-charge must correct the serious violation within 24 hours.¹² The inspector must re-inspect a facility within 48 hours of the time the serious violation was first observed to ensure such violation has been corrected.¹³ Currently, the FMJS does not provide a monetary penalty if violations of the FMJS are not corrected.

If a county or municipal detention facility fails to correct violations of the FMJS and a court finds the facility is not in compliance with such minimum standards, the court may order the facility to transfer prisoners to a different facility that meets all FMJS.¹⁴ In such cases, the costs of maintaining the removed prisoners is borne by the county or municipality from which the prisoners have been removed.¹⁵

Inmate Commissary and Welfare Fund

A commissary is a store within a county or municipal detention facility which sells a variety of items to prisoners, including food and toiletries. Section 951.23(9), F.S., authorizes commissaries to be operated in detention facilities. If a commissary is established, an inmate welfare fund must also be established.¹⁶ Profits from the commissary must be used for overall inmate welfare, and an inmate welfare fund committee must recommend the expenditures to be made from the fund.¹⁷

Effect of Proposed Changes

Definitions

CS/HB 1561 amends s. 951.23(1)(a), F.S., to revise the definition of “county detention facility” to mean 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 a felony or a misdemeanor, *regardless of whether such facility is operated by a board of county commissioners, a sheriff, or any other entity.*

The bill amends s. 951.23(1)(d), F.S., to revise the definition of “municipal detention facility” to mean a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances, *regardless of whether such facility is operated by a city or any other entity.*

Florida Model Jail Standards Working Group

⁶ *Id.* at 12.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ “Serious violation” means any violation of the FMJS that appears to pose a substantial and immediate danger to the life, health, or safety of one or more inmates or employees. *Id.*

¹¹ *Id.*

¹² *Id.* at 15.

¹³ *Id.*

¹⁴ S. 951.23(6)(a), F.S.

¹⁵ S. 951.23(6)(b), F.S.

¹⁶ S. 951.23(9)(a), F.S.

¹⁷ S. 951.23(9)(d), F.S.

The bill amends s. 951.23(4), F.S., to create the FMJS Working Group to develop and maintain model standards for county and municipal detention facilities. The bill provides the FMJS Working Group is composed of:

- Three elected sheriffs, appointed by the FSA;
- A Florida-licensed physician with at least two years of experience in correctional health care, appointed by the FSA;
- A currently elected county commissioner, appointed by FAC;
- An experienced jail administrator of a county jail operated by a county, appointed by FAC; and
- A Florida-licensed psychiatrist with at least two years of experience in correctional psychiatry, appointed by FAC.

Florida Model Jail Standards

The bill amends the statutory requirements under s. 951.23(4), F.S., for the FMJS as follows:

- Deletes a provision prohibiting the confinement of prisoners awaiting trial with prisoners that have been convicted of a crime;
- Requires special consideration be given to the appropriate housing of pregnant women;
- Requires adoption of additional standards for inspections of county and municipal detention facilities; and
- Requires every sheriff, county, city, or other entity that operates a county or municipal detention facility to adopt the FMJS as approved by the FMJS Working Group.

County and Municipal Detention Facility Inspections

The bill creates s. 951.2302, F.S., to establish minimum standards for municipal and county detention facility inspections. The bill requires the FMJS Working Group to create and identify criteria and standards for which noncompliance will result in either a serious or notable violation. The bill defines a “serious violation” as any violation of the FMJS or other conditions or practices that appear to pose a substantial and immediate danger to the life, health, or safety of one or more inmates or employees. A “notable violation” is defined as any violation of the FMJS that is not a serious violation.

Under the bill, each county and municipal detention facility must be inspected twice annually, with each inspection occurring at least 120 days apart, for compliance with the FMJS. One inspection must be announced, with advance notice provided to the detention facility of the date on which the inspection is to occur. The announced inspection must include an inspection for compliance with all of the FMJS. The other inspection must be a limited, unannounced inspection, with no advanced notice provided to the detention facility. The unannounced inspection must be limited to a review for serious violations.

The bill prohibits a detention facility from refusing to be inspected or refusing access to the facility by FMJS inspectors. If a person in charge of a facility refuses to allow inspection or provide access to the facility, the bill requires his or her salary to be withheld for each day he or she refuses to allow inspection or access. The monies withheld must be deposited into the facility’s inmate welfare fund. This penalty applies to any person refusing such inspection or access, regardless of whether the person is elected, appointed, or an employee of a county, city, or other political subdivision of the state.

If, during one of the inspections, a detention facility is found to be noncompliant with the FMJS for a notable violation, the facility must correct the noncompliance within 30 days. After the 30-day correction period or upon the facility notifying the FMJS Working Group that it has corrected its noncompliance, whichever is earlier, the facility must be re-inspected within 10 days. If upon re-inspection, the facility continues to be noncompliant, the facility has 15 days to correct the noncompliance and have a second re-inspection within 48 hours thereafter. If the facility continues to be noncompliant after the first and second re-inspection, the facility must pay the following amount into the facility’s inmate welfare fund for each day that the facility is not in compliance with the FMJS:

- \$500 per day of noncompliance for the 31st day through the 60th day;
- \$1,000 per day of noncompliance for the 61st day through the 90th day; and
- \$2,000 per day of noncompliance for the 91st day and all remaining days the facility is not in compliance.

The bill requires a serious violation to be corrected within 24 hours and requires a re-inspection to occur within 48 hours after the serious violation was first observed. A re-inspection may occur prior to the expiration of the 24-hour period if the facility notifies the FMJS Working Group that it has cured the noncompliance. If upon re-inspection, the facility has not corrected the serious violation, the facility must pay a fine of \$2,000 per day into the facility's inmate welfare fund until such violation has been corrected.

In addition to the penalties specified in the bill, if a second re-inspection for a notable violation or a serious violation reveals that the detention facility continues to be noncompliant, the facility must cease operation as a detention facility within 14 days and must contract with one or more other detention facilities to house its prisoners until the facility is determined to be in compliance with the FMJS. The 14-day time period commences upon:

- The expiration of the appeal process, which will be developed by the FMJS Working Group;
- The facility failing to file a timely appeal; or
- The conclusion of an appeal process that results in a finding that the detention facility is noncompliant with the FMJS.

The bill provides that if the detention facility consists of separate detention campuses, only the campus that is determined to be noncompliant must cease operations. The receiving detention facility must be in compliance with the FMJS and the noncompliant facility is responsible for the costs accrued by the receiving facility for housing its prisoners. The bill provides that the penalty for noncompliance during a second re-inspection for a notable violation or a serious violation may not be deemed to limit or prevent any other remedies or causes of action against a facility or an entity that operates a facility that may be brought under any other law, ordinance, or rule.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 2: Creates s. 951.2302, F.S., relating to inspection of county and municipal detention facilities; penalties for noncompliance with jail standards.

Section 3: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local government expenditures due to fines and costs imposed on non-compliant facilities. The bill creates fines for violations of the FMJS which are

not corrected by the first re-inspection. Fines collected due to non-compliance with FMJS are deposited into the detention facility's inmate welfare fund, to be used for overall inmate welfare.¹⁸ To the extent that an officer-in-charge could authorize use of the inmate welfare funds, expenditures may increase. However, the amount of potential increase in expenditures is indeterminate.

The bill also creates a requirement for facilities to cease operations if they are deemed noncompliant after a second re-inspection. In the event a detention facility is required to cease operations, the local entity operating the facility will be required to pay for the cost of transporting prisoners to a compliant facility and must contract to provide for the per diem cost of housing the relocated prisoners.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of article VII, section 18 of the Florida Constitution may apply because the bill may require county and municipal detention facilities to pay for additional inspections of such facilities and may subject them to fines for noncompliance with the FMJS. An exemption may apply if the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Renamed the Florida Model Jail Standards Commission as the Florida Model Jail Standards Working Group.
- Defined the terms "serious violation" and "notable violation."
- Made technical changes to clarify provisions of the bill and existing law.

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

¹⁸ A county or municipal detention facility is required to establish an inmate welfare fund if that facility establishes a commissary. An inmate welfare committee recommends expenditures of the fund to the officer in charge, who has final authority on expenditures. S. 951.23(9), F.S.