

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 184

SPONSOR: Senator Lee

SUBJECT: Concealed Handcuff Key Offense

DATE: November 16, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Senate Bill 184 makes it a third degree felony, ranked in level 4 of the Criminal Punishment Code offense severity ranking chart, for a “person in custody” to possess a concealed handcuff key. The bill defines key terms and provides three defenses (and an exception to one of the defenses) to a charge of violating the new section created by this bill.

This bill creates s. 843.021, Florida Statutes and substantially amends s. 921.0022, Florida Statutes.

## II. Present Situation:

### A. Current Law

Current law does not specifically prohibit and punish the possession of a concealed handcuff key, though possession of a concealed handcuff key could be punished under current law in certain contexts. Further, an escape or attempted escape is punished under current law.

Section 944.40, F.S., provides that an inmate commits a second degree felony if he or she escapes or attempts to escape from any prison, jail, private correctional facility, road camp, or other penal institution.

Section 951.22, F.S., provides, in part, that an inmate in a county detention facility commits a third degree felony if he or she possesses any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from such facility.

Notably, while s. 944.47, F.S., provides that it is a third degree felony for an inmate in a state correctional facility to possess certain contraband specified in that section, a concealed escape key or other tool or instrumentality that may be used to effect an escape is not listed in this section.

Section 951.23, F.S., provides, in part, that an inmate commits a second degree misdemeanor if he or she violates, on two or more occasions, a posted jail rule prohibiting:

- Possession of contraband;
- Anything not authorized for retention or receipt by the inmate and not issued to him or her through regular institutional channels; and
- Conduct which disrupts or interferes with the security or orderly running of an institution.

#### **B. Tampa Ordinance Governing Possession of a Concealed Handcuff Key**

Section 14-26, Tampa City Code (Ordinance No. 98-166, sec.1), prohibits, in part, the possession of a concealed handcuff key by a person in custody. A violation of the ordinance is punishable by a fine of up to \$1000, up to 6 months in jail, or both.

The ordinance defines several key terms. “Handcuff key” is defined as “any key, tool, device, implement or other thing used, designed, or intended to aid in unlocking or removing handcuffs or flex cuffs.”

“Concealed handcuff key” is defined as follows:

. . . any handcuff key carried on the person in any manner indicating an intent to prevent discovery of the key by a law enforcement officer including, but not limited to, a handcuff carried:

- a. In a pocket and unconnected to a key ring;
- b. On a necklace;
- c. Secured by tape, glue or line to any body part or item of clothing;
- d. Within any compartment, seam, fold or other encasement within any item of clothing, belt, shoe or jewelry;
- e. Within any sock, hose, shoe, belt, undergarment, glove, hat or similar item;
- f. Disguised as jewelry or other object on the person; or
- g. In any body cavity.

“In custody” is defined as “the point in time when a person is placed in handcuffs, flexcuffs or any other movement restraining device by a law enforcement official, regardless of whether the person is under formal arrest.”

The ordinance provides three defenses to a charge under this section (and an exception to one defense). First, it is a defense that “the handcuff key possessed by a person in custody was not secreted on the person but was one . . . of several keys on the person’s sole key ring.”

Second, it is a defense “that immediately upon being placed in custody, the person actually and effectively disclosed to the police officials the fact that the person was in possession of a handcuff key.

Third, it is a defense “that the person in possession of a concealed handcuff key is a federal, state or local law enforcement officer (including reserve or auxiliary officer), licensed security officer or private investigator as defined in Florida Statute [sec.] 493.6101 (1997) (as amended) or professional or temporary bail bond agent or runner therefor as defined in Florida Statute [sec.] 648.25 (1997) (as amended). . . .” An exception to the availability of this defense is that the law enforcement officer “fails to actually and effectively disclose possession of a concealed handcuff key upon being placed in custody.”

### **III. Effect of Proposed Changes:**

Senate Bill 184 creates s. 843.021, F.S., which makes it a third degree felony for a “person in custody” to possess a concealed handcuff key. The bill defines key terms and provides three defenses (and an exception to one of the defenses) to a charge of violating the new section created by this bill.

The bill, with minor wording variations, almost mirrors provisions of Section 14-26, Tampa City Code (Ordinance No. 98-166, sec.1), prohibiting possession of a concealed handcuff key by a person in custody; incorporating definitions of “handcuff key,” “concealed handcuff key,” and “in custody”; and incorporating the three defenses (and exception to one defense) in the Tampa ordinance (see “Present Situation” section of this analysis for a detailed description of ordinance provisions).

The bill amends s. 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to rank the new offense in level 4.

The act takes effect October 1, 2000.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Fiscal analysis of SB 184 was unavailable at the time this analysis was completed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to legal counsel for the Tampa Police Department, the impetus for Section 14-26, Tampa City Code (Ordinance No. 98-166, sec.1) was the widely publicized incident involving a career criminal and criminal suspect named Hank Earl Carr.

On May 19, 1998, Tampa detectives Randy Bell and Rick Childers were driving Carr to police headquarters for questioning in the death of his girlfriend's four-year old son. According to published reports, Carr was in the rear seat of the car. He was handcuffed in front rather than in back. Carr had a universal handcuff key on a string around his neck. Carr slipped out of the handcuffs, grabbed Detective Childers weapon and shot and killed Detective Childer and Detective Bell.

After killing the detectives, Carr grabbed a rifle from the trunk of the car, hijacked a truck and wounded the driver, and fled north. Carr then killed James Crooks, a Florida Highway trooper, who attempted to stop Carr, and wounded a truck driver. Carr's flight ended when he stopped at a gas station near Brooksville and took the station clerk hostage. During the hostage situation, Carr told the clerk that he had a handcuff key and described how he used the key to release himself. Approximately six hours after taking the clerk hostage Carr released her. Shortly thereafter Carr committed suicide.

According to legal counsel for the Tampa Police Department, the department had no specific requirement to handcuff suspects in the back at the time of the Carr incident but now has a requirement. Limited exceptions are made to this requirement but only upon approval of the police supervisor.

Universal or master handcuff keys are available on the Internet and may be procured from various retail stores such as safety supply stores and military surplus stores.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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