

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 84
Judiciary

(Delegate Cluster)

Contraband - Places of Confinement - Penalty

This bill expands prohibitions against the delivery or possession of contraband in a place of confinement. Specifically, the bill prohibits a correctional officer or any other employee or independent contractor working at a place of confinement from delivering contraband, alcohol, controlled dangerous substances, or a telecommunication device to a detainee or inmate. The bill prohibits knowingly possessing such contraband in a place of confinement, as well as possessing contraband with the intent to distribute it to a detainee or inmate. In addition, a correctional officer or any other employee or independent contractor working at a place of confinement may not deposit or conceal a telecommunication device in or about a place of confinement or nearby to the place of confinement with the intent for it to be obtained by a detainee or inmate. A violation of any of the new prohibitions is a felony, subjecting the violator to maximum penalties of imprisonment for five years and/or a fine of \$5,000. Pursuant to current law, a sentence imposed for any of these offenses may be imposed as consecutive to or concurrent with a sentence for any crime based on the act establishing the offense.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: A person may not (1) deliver any contraband to a person detained or confined in a place of confinement or (2) possess any contraband with intent to deliver it to a person detained or confined in a place of confinement. A person may not knowingly possess contraband in a place of confinement.

- *Alcoholic Beverages:* A person may not (1) deliver an alcoholic beverage to a person detained or confined in a place of confinement or (2) possess an alcoholic beverage with the intent to deliver it to a person detained or confined in a place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive an alcoholic beverage. These prohibitions do not apply to an alcoholic beverage delivered or possessed in a manner authorized by the managing official.
- *Controlled Dangerous Substances:* A person may not (1) deliver a controlled dangerous substance to a person detained or confined in a place of confinement or (2) possess a controlled dangerous substance with the intent to deliver it to a person detained or confined in a place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive a controlled dangerous substance.
- *Telecommunication Devices:* A person may not deliver a telecommunication device to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not possess a telecommunication device with the intent to deliver it to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not deposit or conceal a telecommunication device in or about a place of confinement with signs posted indicating that such conduct is prohibited or on any land appurtenant to the place of confinement with the intent that it be obtained by a person detained or confined in the place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device.

A violator of any of these misdemeanor contraband offenses is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000. A sentence imposed for a contraband offense may be imposed as consecutive to or concurrent with a sentence for any crime based on the act establishing the offense.

Background: Inmate access to contraband, including cell phones, recently received significant attention with the April 2013 federal indictment of 25 individuals, including inmates and 13 correctional officers employed by Department of Public Safety and Correctional Services (DPSCS), with conspiring to run operations of the Black Guerilla Family (BGF) gang inside the Baltimore City Detention Center and related facilities.

Charges included racketeering, drug distribution, money laundering, victim and witness retaliation, bribery, and extortion. According to the indictment, correctional officers helped leaders of the BGF smuggle cell phones, drugs, and other contraband into State correctional facilities.

In November 2013, an additional 19 individuals, including 14 former and current DPSCS correctional officers, were charged with conspiring to operate the BGF gang inside correctional facilities. With the November 2013 indictment, 44 individuals, including 27 correctional officers, have been charged in the case.

In response to the April 2013 indictments, the Legislative Policy Committee appointed a Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities. In its December 2013 final report, the commission made several recommendations, including (1) increasing the maximum penalty for telecommunication devices-related offenses to imprisonment for five years and/or a \$3,000 fine; (2) expanding the current statutory prohibitions to include attempting to deliver a telecommunication device to a person detained or confined in a place of confinement if signs are posted indicating that such conduct is prohibited; and (3) requiring that a sentence imposed on an inmate for the commission of a telecommunication devices-related offense be served consecutively to the sentence the inmate is already serving.

The use of telecommunication devices by inmates is a growing problem in prisons throughout the country. Cell phones provide inmates with access to the outside world, and according to prison experts, an opportunity to continue criminal activity while incarcerated. Cell phones also pose an internal threat in facilities, since they allow prison inmates to plan prison assaults, escapes, and riots. Cell phones are a lucrative form of contraband because, unlike drugs, they have significant and perpetual resale and rental potential and value.

A portion of the attention generated by the indictments pertained to the State's ability to suspend or terminate correctional officers engaged in the type of behavior described in the indictments. According to the Correctional Officers' Bill of Rights (Chapter 194 of 2010), the appointing authority may authorize the emergency suspension of a correctional officer without pay if the officer is charged with a *felony*. Most of the offenses related to the possession of contraband by inmates or the delivery of contraband to an inmate (including all of the offenses affected by this bill) are misdemeanors. The commission discussed this issue and recommended that State law be amended to authorize an emergency suspension without pay when a correctional officer is charged with bringing contraband into a correctional facility, irrespective of the offense's classification as a misdemeanor.

According to the Maryland Sentencing Guidelines database, in the State's circuit courts in fiscal 2013, there were 25 convictions for violations against the general contraband prohibition; 13 convictions for drug-related offenses; and 10 convictions for telecommunication devices-related offenses. There were no reported convictions for violations against the other contraband prohibitions in the circuit courts in fiscal 2013.

DPSCS advises that it has seized 7,379 contraband cell phones over the past six years. Since 2010, approximately 1,038 resulting charges have been filed; 618 of these charges were adjudicated, with approximately 60% of the 618 cases resulting in a guilty verdict. According to DPSCS's analysis of a sample of the convictions, approximately 30% of the defendants received a sentence of six months, nearly 15% received a sentence of one year, and 15 individuals received the maximum sentence of three years.

Various bills have been introduced in prior sessions to increase the seriousness and penalties for illegal cell phones in a place of confinement, but all have failed.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and inmates already incarcerated for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed offenses is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$735 per month. Excluding all health care, the average variable costs total \$185 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been

sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The bill may also minimally increase the caseloads of the Office of the Public Defender.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - January 30, 2014
ncs/lgc

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