

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1194

(Delegate Sophocleus, *et al.*)

Judiciary

Judicial Proceedings

Criminal Law - Unauthorized Possession of Contraband - Place of Confinement

This bill makes several changes and additions to provisions relating to contraband, weapons, alcoholic beverages or controlled dangerous substances, and “telecommunication devices” in places of confinement.

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

Bill Summary: The bill prohibits a person from knowingly possessing contraband in a place of confinement. A violator is guilty of a misdemeanor and subject to current law maximum penalties of imprisonment for three years and/or a fine of \$1,000. The bill also prohibits a person from knowingly possessing or receiving a weapon or contraband to effect an escape. A violator is guilty of a felony and subject to current law maximum penalties of imprisonment for 10 years and/or a fine of \$5,000.

In addition, a person detained or confined in a place of confinement is prohibited from knowingly possessing or receiving an alcoholic beverage or controlled dangerous

substance. A violator is guilty of a misdemeanor and subject to current law maximum penalties of imprisonment for three years and/or a fine of \$1,000.

The bill also provides that, with signs posted indicating that such conduct is prohibited, (1) 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; (2) a person may not possess such a device with the intent to deliver it to a detained or confined person; (3) a person may not deposit or conceal such a device in or about a place of confinement or on any land appurtenant to such a place with the intent that the device be obtained by a detained or confined person; and (4) a detained or confined person may not knowingly possess or receive a telecommunication device. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

Current Law: Under provisions governing contraband in prisons or jails, “contraband” means any item, material, substance, or other thing of value that: (1) is not authorized for inmate possession by the managing official; or (2) is brought into the correctional facility in a manner prohibited by the managing official. Chapter 41 of 2002 clarified that any item, material, substance, or other thing need not have any particular value to be considered contraband in a correctional facility.

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 detained or confined person. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

“Place of confinement” means: (1) a correctional facility; (2) a facility of the Department of Health and Mental Hygiene; (3) a detention center for juveniles; (4) a juvenile facility, as specified; (5) a place identified in a juvenile community detention order; or (6) any other facility in which a person is confined under color of law. It does not include a place identified in a home detention order or agreement.

Background: Each managing official can define what constitutes contraband in each individual institution. In some institutions, tobacco is considered contraband and in other institutions having additional soap above an inmate’s allotment, additional shirts above allotment, or a homemade tattooing device could be considered contraband. There is no universal definition of contraband for a place of confinement within the State.

State Expenditures: General fund expenditures could increase minimally as a result of the bill’s incarceration penalty due to people being committed to Division of Correction

(DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,300 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 DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 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 DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

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

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: HB 637 and SB 38 of 2006 were similar bills pertaining to weapons in a place of confinement. HB 637 received an unfavorable report from the House Judiciary Committee. SB 38, as amended, passed the Senate and received an unfavorable report from Judiciary. SB 116 of 2006, which contained some of the provisions of this bill, received an unfavorable report from the Senate Judicial Proceedings Committee. In 2005, SB 83 contained some similar provisions to this bill. That bill passed the Senate with amendments, passed the House with amendments, and had no further action taken on it.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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