

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 138

(Chair, Judiciary Committee)(By Request - Departmental
- Public Safety and Correctional Services)

Judiciary

Criminal Law - Contraband - Telecommunication Devices - Penalties

This departmental bill elevates from a misdemeanor to a felony and increases the maximum penalties for offenses pertaining to (1) a person detained or confined in a place of confinement who knowingly conceals a telecommunication device; (2) a person who delivers a telecommunication device to a detained or confined person; (3) a person who possesses a telecommunication device in a place of confinement with the intent to deliver it to a detained or confined person; or (4) a person who deposits or conceals a telecommunication device in a place of confinement or land appurtenant to such a place with the intent that the device be obtained by a detained or confined person.

Under the bill, the maximum penalty for these offenses is increased from a \$1,000 fine and/or three years imprisonment to a \$3,000 fine and/or five years imprisonment.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues as a result of the bill's change in the classification of offenses from misdemeanors to felonies. Potential minimal increase in general fund expenditures due to the bill's enhanced penalty provisions.

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

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small businesses (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: A “telecommunication device” is a device that is able to transmit telephonic, electronic, digital, cellular, or radio communications. “Telecommunication device” includes a part of such a device, regardless of whether the part itself is able to transmit.

A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device. If signs are posted indicating that such conduct is prohibited, a person may not (1) deliver a telecommunication device to a person detained or confined in a place of confinement; (2) possess a telecommunication device with the intent to deliver it to a detained or confined person; or (3) deposit or conceal such a telecommunication 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. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

Background: 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 to conduct criminal activity while incarcerated. Cell phones are a lucrative form of contraband because, unlike drugs, they have significant and perpetual resale and rental potential and value.

In 2008, the Internal Investigative Unit (IIU) for DPSCS investigated 330 cell phone possession cases. IIU investigated 242 cases between November 1, 2009, and November 30, 2010. These numbers do not represent the total number of cell phones found in correctional facilities, but rather cell phone incidents where it is likely that possession can be linked to an individual. The decrease in IIU cases between 2008 and 2009-2010 is most likely attributable to enhanced screening for cell phones in correctional facilities. In February 2010, Governor O’Malley stated that Maryland correctional officers confiscated 741 cell phones in 2007, 1,236 cell phones in 2008, and 1,658 cell phones in 2009.

In October 2008, Governor Rick Perry of Texas ordered the lockdown of the state’s 112 prisons and searches of each of the state’s 156,000 inmates. The searches resulted in the confiscation of 128 phones and various accessories and SIM cards (portable cell phone memory cards). The orders were issued after a death row inmate made a threatening telephone call to a Texas legislator and the subsequent discovery that at least 2,800 telephone calls and text messages had been made from the inmate’s cell phone by the inmate and nine other prisoners, including members of prominent gangs. During the first four months of 2009, Texas prison officials seized 549 cell phones.

In April 2009, Patrick Byers was found guilty in Baltimore of the murder of Carl Lackl, Jr., a witness who had planned to testify against Byers during his trial for another murder. Byers used a contraband cell phone while in jail to order and arrange payment for Lackl's death.

Also in April 2009, 24 people, including gang members, three correctional officers, and one prison employee, were indicted in connection to the operation of a drug ring out of several Maryland prisons. The gang operated the ring with the assistance of contraband cell phones, which they allegedly obtained from the officers and prison employee.

According to news reports, prison guards in California found 1,400 cell phones in 2007, 6,995 phones in 2009, and over 8,600 in 2010. In May 2009, the California Inspector General released a report finding that inmates in California prisons pay between \$500 and \$1,000 per cell phone. In 2010, notorious serial killer Charles Manson was caught with a cell phone under his prison mattress in California.

States are implementing various methods to detect cell phones in prisons. In June 2008, Maryland started a program that uses dogs to sniff out cell phones. Virginia, California, Pennsylvania, and Arizona are among the other states that use such programs.

On October 5, 2009, the U.S. Senate passed the Safe Prisons Communications Act of 2009, which authorizes states to petition the Federal Communications Commission to jam or block the use of cell phones from prisons. Similar legislation has been introduced in the House but, to date, no committee action has taken place. The use of jamming or blocking technology is currently illegal under the Communications Act of 1934, which prohibits interference with commercial radio signals. Many states, including Maryland, South Carolina, and Louisiana, along with the District of Columbia, have petitioned the federal government to test jamming technology. In February 2010, the first test of this technology took place at the Federal Correctional Institute in Cumberland. According to a press release issued by U.S. Senator Barbara Mikulski and Governor Martin O'Malley, test results indicate that the jamming technology did not interfere with federal operations of the prison within the testing area.

In August 2010, President Obama signed the Cell Phone Contraband Act into law. The legislation classifies cell phones and wireless devices as contraband and bans the possession or use of these items by inmates in federal prisons. Anyone who provides or attempts to provide an inmate in a federal prison with a cell phone or wireless device could face imprisonment for up to one year. The Federal Bureau of Prisons confiscated more than 2,600 cell phones from minimum security facilities and approximately 600 from secure federal prisons in 2009.

State Revenues: Potential minimal decrease in general fund revenues due to the designation of the bill's offenses as felonies instead of misdemeanors. In general, misdemeanor cases are heard in the District Court, and felony cases are heard in the circuit courts. Fines imposed in the District Court are general fund revenues; fines imposed in circuit courts go to the appropriate local jurisdiction. Since the bill changes certain offenses from misdemeanors to felonies and transfers these cases to circuit courts, any fine revenue will go to local jurisdictions.

State Expenditures: It cannot be reliably determined at this time if enhancing the classification of these offenses will result in an increased number of prosecutions or increased sentences for inmates. However, it is anticipated that any increase in the number of people convicted of this crime as a result of this bill will be minimal.

General fund expenditures for the District Court decrease minimally as a result of decreased District Court caseloads. General funds expenditures for the Office of the Public Defender increase minimally as a result of the increased workload associated with felony cases in circuit courts. General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities for longer periods of time.

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 \$2,920 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 variable medical care and variable operating costs) is \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Local Revenues: Local revenues increase minimally from monetary penalties imposed in these cases in the circuit courts.

Local Expenditures: Local expenditures increase minimally due to the increase in circuit court caseloads as a result of the bill's felony classification of cell phone contraband offenses.

Additional Information

Prior Introductions: HB 78 of 2010 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; wired.com; WBAL; TIME.com; National Conference of State Legislatures; U.S. Department of Justice; CNN.com; msnbc.com; *The New York Times*; *The Baltimore Sun*; foxnews.com; *House Approves Feinstein Measure to Prohibit Cell Phones in Prison*, Office of United States Senator Dianne Feinstein, July 21, 2010; *Senator Barbara Mikulski, Governor Martin O'Malley Urge Congressional Action on Cell Phone Jamming Legislation Following Results of Prison Test*, Office of Governor Martin O'Malley, May 12, 2010; engadget.com; *Cumberland Times-News*; *The Los Angeles Times*; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2011
ncs/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law – Contraband – Telecommunication Devices -
Penalties

BILL NUMBER: HB 138

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.