

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 175

(Delegate Guzzone)(Chair, Special Joint Commission on
Public Safety and Security in State and Local Correctional
Facilities) and Delegate Cluster

Judiciary

Judicial Proceedings

**Criminal Law - Contraband - Telecommunication Devices and Accessories -
Penalty**

This bill prohibits a person from attempting to deliver a “telecommunication device,” telecommunication device charger, or subscriber identification module (SIM) card to a person detained or confined in a place of confinement if signs are posted indicating that such conduct is prohibited. The bill also adds chargers and SIM cards as prohibited items that a person may not deliver to an inmate, possess with intent to deliver to an inmate, deposit or conceal in or about a place of confinement, or knowingly possess or receive while an inmate in a place of confinement.

The bill also increases the maximum penalty for offenses relating to a telecommunication device in a place of confinement from imprisonment for three years and/or a \$1,000 fine to imprisonment for five years and/or a \$3,000 fine. Under the bill, a sentence imposed for knowing possession or receipt of a telecommunication device by a person detained or confined in a place of confinement must be consecutive to any sentence that the person was serving at the time of the crime or that had been imposed but was not yet being served at the time of the sentence.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in the District Court. Minimal increase in general fund expenditures as a result of the bill’s increased incarceration penalty and creation of an attempt offense.

Local Effect: Potential minimal increase in local revenues from fines imposed in circuit court cases. Minimal decrease in local expenditures to the extent that the increased incarceration penalty under the bill shifts individuals from local detention facilities to State correctional facilities.

Small Business Effect: None.

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 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.

Inmate access to cell phones recently received significant attention with the April 2013 federal indictment of 25 individuals, including inmates and 13 correctional officers employed by 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, drug, 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 telecommunications 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.

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.

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.

According to the Maryland Sentencing Guidelines database, there were 7 convictions for telecommunication devices-related offenses in Maryland's circuit courts in fiscal 2011, 8 convictions in fiscal 2012, and 10 convictions in fiscal 2013.

State Expenditures: General fund expenditures increase minimally from an increase in the number of individuals incarcerated in State correctional facilities and an increase in the length of incarceration of individuals in State correctional facilities.

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.

Local Expenditures: Expenditures decrease minimally if individuals who would normally be sentenced to local correctional facilities are sent to State correctional facilities as a result of the bill. 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: This bill is similar to bills introduced during previous sessions. SB 478 of 2013 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 651, received an unfavorable report from the House Judiciary Committee. HB 587 of 2012, HB 138 of 2011, and HB 78 of 2010 also received unfavorable reports from the House Judiciary Committee.

Cross File: SB 206 (Senator DeGrange)(Chair, Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities) - Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Department of Public Safety and Correctional Services; Maryland State Commission on Criminal Sentencing Policy; Office of the Public Defender; Department of State Police; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Federal Bureau of Investigation; Department of Legislative Services

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