

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 159

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

Judiciary

Criminal Law - Contraband - Telecommunication Devices - Penalty

This departmental bill prohibits a person from 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. The bill also reclassifies existing statutory offenses pertaining to telecommunication devices in places of confinement from misdemeanors to felonies and increases the maximum penalty for these offenses from imprisonment for three years and/or a \$1,000 fine to imprisonment for five years and/or a \$3,000 fine.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues due to the shifting of fine revenues from the District Court to the circuit courts. Minimal increase in general fund expenditures as a result of the bill’s increased incarceration penalty.

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. It is assumed that any increase in circuit court caseloads as a result of the bill can be handled with existing local resources.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) advises that the bill has minimal or no economic impact on small businesses. The Department of 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 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 Revenues: General fund revenues may decrease minimally as a result of the bill's reclassification of offenses from misdemeanors to felonies. In general, misdemeanor cases are heard in the District Court and felony cases heard in the circuit courts. Fines imposed in District Court cases are deposited into the general fund; fines imposed in circuit court cases go to the appropriate local jurisdiction. Because the bill changes certain offenses from misdemeanors to felonies and transfers these cases to the circuit courts, any fine revenue from these cases will go to local jurisdictions under the bill's changes.

State Expenditures: General fund expenditures increase minimally to the extent that the overall effect of the bill is the shifting of individuals from local correctional facilities to

State correctional facilities or an extension of the 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.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Although the net effect of the bill is a minimal increase in general fund expenditures as discussed above, the bill could also generate a minimal reduction in general fund personnel expenditures if correctional officers charged with a telecommunication devices-related offense shift from leave with pay to leave without pay status as a result of the bill. DPSCS advises that, according to case data for contraband offenses filed with both the Office of Administrative Hearings and the Correctional Officers' Bill of Rights from 2010 through 2013, correctional officers involved in contraband offenses incurred over 600 days of paid administrative leave totaling approximately \$125,000 in regular wages and overtime.

Local Revenues: Local revenues may increase minimally from monetary penalties imposed in additional circuit court cases.

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.

Harford, Montgomery, Queen Anne's, and St. Mary's counties advise that the bill has little or no fiscal impact on their jurisdictions.

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 113 (Chair, Judicial Proceedings Committee)(By Request - Departmental - Public Safety and Correctional Services) - Judicial Proceedings.

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

Fiscal Note History: First Reader - January 31, 2014
ncs/kdm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law-Contraband-Telecommunications Devices - Penalty

BILL NUMBER: HB 159

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