



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bills 551 and 552 (as enrolled)
Sponsor: Senator Goeff Hansen
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 6-27-12

RATIONALE

Michigan law prohibits a person from selling, giving, or furnishing a cell phone or other wireless communication device to a prisoner in a State correctional facility, but does not prohibit a prisoner from possessing such a device. In addition, the prohibition against providing a cell phone or other wireless device to a prisoner does not apply to a prisoner in a county jail or other local detention facility. It has been pointed out that these devices can be used by prisoners for illicit purposes such as smuggling contraband and planning jailbreaks. Some people believe that the current prohibition should be extended to jail inmates and that a prisoner's possession of a cell phone or wireless device should be subject to a criminal penalty.

CONTENT

Senate Bill 551 would amend Public Act 17 of 1909, which prohibits or limits access to certain items by prisoners and corrections employees, to do the following:

- **Prohibit a prisoner from possessing or using a cell phone or other wireless communication device in or on the grounds of a correctional facility, unless authorized by the Department of Corrections (DOC).**
- **Specify that a cell phone or other wireless device would be subject to confiscation and disposal as contraband.**
- **Require a confiscated cell phone or other wireless device to be donated to charity if it were serviceable but no longer needed for criminal prosecution.**

Senate Bill 552 would amend Public Act 7 of 1981, which prohibits jail prisoners' possession of certain items, to do the following:

- **Prohibit a person from selling or furnishing a cell phone or other wireless communication device to a jail prisoner, or disposing of such a device in a jail or a building appurtenant to a jail, or on grounds used for jail purposes.**
- **Prohibit a jail prisoner from possessing or using a cell phone or other wireless device in a jail building or on grounds used for jail purposes.**
- **Specify that a cell phone or other wireless device would be subject to confiscation and disposal as contraband.**
- **Require a confiscated cell phone or other wireless device to be donated to charity if it were serviceable but no longer needed for criminal prosecution.**

A more detailed description of the bills follows.

Senate Bill 551

Prisoner Possession or Use of a Cell Phone

Section 3a of Public Act 17 of 1909 prohibits a person from selling, giving, or furnishing, or aiding in the selling, giving, or furnishing of a cell phone or other wireless communication device to a prisoner in a correctional facility. It also prohibits a person from disposing of a cell phone or

other wireless communication device in or on the grounds of a correctional facility.

The bill also would prohibit a prisoner from possessing or using a cell phone or other wireless communication device in a correctional facility or on the grounds of a correctional facility, except as authorized by the DOC.

A violation of the Act is a felony punishable by up to five years' imprisonment, a maximum fine of \$1,000, or both.

(The Act defines "correctional facility" as any of the following:

- A State prison, reformatory, work camp, or community corrections center.
- A youth correctional facility operated by the DOC or a private vendor under the Corrections Code.
- A privately operated community corrections center or resident home that houses prisoners committed to the DOC's jurisdiction.
- The land on which a facility described above is located.)

Confiscation & Donation to Charity

A cell phone or other wireless device sold, given, furnished, possessed, or used in violation of the bill would be subject to confiscation and disposal as contraband.

If a cell phone or other wireless device were confiscated, and it were serviceable but no longer needed for purposes of criminal prosecution under Section 3a, the device would have to be donated to a nonprofit organization that provides cellular phones and other wireless communication devices to military personnel, or to any other charity approved by the warden of the facility where the device was confiscated.

Senate Bill 552

Prohibited Conduct

The bill would add Section 2a to Public Act 7 of 1981 to prohibit a person from selling, giving, or furnishing or aiding in the selling, giving, or furnishing of a cell phone or other wireless communication device to a prisoner in a jail or a building appurtenant to a jail or on grounds used for jail purposes. The bill also would prohibit a person from disposing

of a cell phone or other wireless communication device in a jail or appurtenant building, or on grounds used for jail purposes.

In addition, the bill would prohibit a prisoner from possessing or using a cell phone or other wireless communication device in a jail or a building appurtenant to a jail or on grounds used for jail purposes, except as authorized by the person in charge of the jail.

A violation of the Act is a felony punishable by up to five years' imprisonment, a maximum fine of \$1,000, or both.

(The Act defines "jail" as a municipal or county jail, work-camp, lockup, holding center, half-way house, community corrections center, house of correction, or any other facility maintained by a municipality or county that houses prisoners.)

Confiscation & Donation to Charity

A cell phone or other wireless device sold, given, furnished, possessed, or used in violation of the bill would be subject to confiscation and disposal as contraband.

If a cell phone or other wireless device were confiscated, and it were serviceable but no longer needed for purposes of criminal prosecution under Section 2a, the device would have to be donated to a nonprofit organization that provides cellular phones and other wireless communication devices to military personnel, or to any other charity approved by the warden of the facility where the device was confiscated.

MCL 800.283a (S.B. 551)

Proposed MCL 801.262a (S.B. 552)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Cell phones and other small wireless communications devices can cause problems in prisons and jails. Often, these devices are not just phones but also computers and cameras and can be used in a variety of ways to coordinate activities with parties

outside of the facility for such purposes as smuggling contraband and planning and executing escape attempts. For example, the prosecuting attorney for Ionia County told the Senate Judiciary Committee that there had been at least five cases in that county in which prisoners possessed cell phones and were either planning an escape or coordinating drug activity. There likely were many more cases in which inmates possessed cell phones, but they were not referred to the prosecutor because mere possession is not presently a crime. While the DOC and local jail administrators can and do have policies prohibiting prisoners' possession of cell phones or other wireless devices, the penalty for a violation is limited to administrative sanctions such as loss of television or recreational privileges.

Current law is inconsistent on the subject of cell phones and other wireless communication devices in prisons and jails. It is a criminal violation for a person to supply a prisoner in a State correctional facility with such a device, but there is no complementary provision regarding prisoners in county jails and other local facilities. While county jails typically house less serious offenders than prisons do, the jails often deal with the more serious level of offenders, because they house defendants during trial and sometimes lease space to the State to incarcerate prisoners under the DOC's jurisdiction. It stands to reason that prohibitions regarding cell phones in prisons also should apply to jails.

Michigan law should prohibit and punish both trafficking in wireless communications devices inside prisons and jails, and the possession of these devices by prisoners. By extending the current prohibition against providing a State prisoner with a wireless communication device to prisoners in jails and other detention facilities, Senate Bill 552 would make the law consistent regardless of the jurisdiction in which a prisoner was held. By codifying prohibitions against the possession of those devices and making the offenses subject to criminal penalties, both bills would make it less attractive for prisoners to obtain cell phones and other communication devices.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. To the extent that these bills increased the number of convictions related to cellular phones in correctional facilities, the State and local units of government would incur additional costs. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.