



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 940 **As Engrossed** **(Patron Prior to Engrossment – Puckett)**

Date Submitted: 2/8/2005

LD #: 05-7917792

Topic: Possession of cellular telephone by prisoner

Proposed Change:

This proposal adds § 18.2-431.1 to make it a Class 6 felony for an incarcerated prisoner to possess a cell phone or for any person to provide a cell phone to an incarcerated prisoner.

Analysis:

According to the Department of Corrections (DOC), three states (Texas, Pennsylvania and Iowa) have passed similar provisions, while another (Washington state) is considering a largely similar measure. Currently, in Virginia's prison system, a cell phone possessed by an inmate can be confiscated as contraband once it is discovered, but there are no criminal penalties for inmates who commit this violation.

Although the proposal adds a new statute, prisoner-related offenses are defined elsewhere in the *Code*. For example, it is a Class 5 felony for an inmate to possess a Schedule I or II drug or marijuana (§ 53.1-203(6)) or for any person to provide narcotics to an inmate (§ 18.2-474.1). Additionally, it is a Class 6 felony for a prisoner to possess a firearm or ammunition (§ 53.1-203(7)) or for a prisoner to make or possess a knife, tool or other instrument capable of causing death or bodily injury (§ 53.1-203(4)). It is a Class 3 felony to deliver or provide firearms, ammunition or explosives to a prisoner (§ 18.2-474.1). Providing or attempting to provide unapproved articles to a prisoner is a Class 1 misdemeanor under § 18.2-474.

According to fiscal year (FY) 2003 and FY2004 Local Inmate Data System data, there were 51 convictions under § 18.2-474. Nearly all (92%) received a local-responsible (jail) sentence with a median term of 30 days. The remaining 8% received no active term of incarceration.

Impact of Proposed Legislation:

As the proposed legislation defines two new felony crimes, the proposal may increase the correctional bed space needs of the Commonwealth; however, the number of incidents affected by the proposal and the potential increase in felony prosecutions cannot be estimated with available data.

The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase Juvenile Correctional Center (JCC) bed space needs.

The Commission provides analyses of the impact on prison and jail bed space and community corrections placement needs in accordance with § 30-19.1:4. Impact analyses do not comment on the merits of the bill under review.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

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