
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 694 **Hearing Date:** April 23, 2019
Author: Stone
Version: February 22, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Halls: Wireless Communication Devices*

HISTORY

Source: Chief Probation Officers of California

Prior Legislation: AB 2002 (Frazier), failed Assembly Public Safety 2014
SB 26 (Padilla), Ch. 500, Stats. 2011
SB 525 (Padilla), vetoed in 2010
SB 434 (Harman), held in Assembly Appropriations in 2010
SB 268 (Harman), not heard in either Public Safety Committee in 2010
SB 655 (Margett), Ch. 655, Stats. 2007
AB 1267 (Leslie), held in Senate Appropriations in 2006

Support: California State Sheriffs' Association; Riverside Sheriffs' Association

Opposition: ACLU of California; California Public Defenders Association; Ella Baker Center for Human Rights; Pacific Juvenile Defender Center

PURPOSE

The purpose of this bill is to make it a misdemeanor for a person to knowingly bring or send into, or to knowingly assist in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp a wireless communication device, as specified, who is not authorized to possess that item.

Existing law provides that any person in a local correctional facility who possesses a wireless communication device, including, but not limited to, a cellular telephone, pager, or wireless Internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than \$1,000. (Pen. Code, § 4575, subd. (a).)

Existing law states that it is a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, a fine not to exceed \$5,000 for each device, or both that fine and imprisonment, for a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the California Department of Corrections and Rehabilitation (CDCR) any cellular telephone or other wireless communication device or any component thereof, except as otherwise authorized by law. (Pen. Code, § 4576, subd. (a).)

Existing law provides that if a person visiting an inmate or ward in the custody of CDCR, upon being searched or subjected to a metal detector, is found to be in possession of a cellular telephone or other wireless communication device or any component thereof, that device or component shall be subject to confiscation but shall be returned on the same day the person visits the inmate or ward, unless the cellular telephone or other wireless communication device or any component thereof is held as evidence in a case where the person is cited for a delivering or possession with intent to deliver the cellular telephone or wireless communication device. (Pen. Code, § 4576, subd. (b)(1).)

Existing law requires, if, upon investigation, it is determined that no prosecution will take place, the cellular telephone or other wireless communication device or any component to be returned to the owner at the owner's expense. (Pen. Code, § 4576, subd. (b)(2).)

Existing law requires notice of this provision to be posted in all areas where visitors are searched prior to visitation with an inmate or ward in the custody of CDCR. (Pen. Code, § 4576, subd. (b)(3).)

Existing law states any inmate who is found to be in possession of a wireless communication device shall be subject to time credit denial or loss of up to 90 days. (Pen. Code, § 4576, subd. (c).)

Existing law provides that a person who brings, without authorization, a wireless communication device within the secure perimeter of any prison or institution housing offenders under the jurisdiction of CDCR is deemed to have given his or her consent to CDCR using available technology to prevent that wireless device from sending or receiving telephone calls or other forms of electronic communication. Requires notice of this provision to be posted at all public entry gates of the prison or institution. (Pen. Code, § 4576, subd. (d).)

Existing law requires CDCR to obtain a valid search warrant prior to accessing data or communications that have been captured using available technology from unauthorized use of a wireless communication device. (Pen. Code, § 4576, subd. (e).)

Existing law prohibits CDCR from capturing data or communications from an authorized wireless communication device, except as already authorized under existing law. (Pen. Code, § 4576, subd. (f).)

Existing law prohibits CDCR from accessing data or communications that have been captured using available technology from an authorized wireless communication device, except as already authorized under existing law. (Pen. Code, § 4576, subd. (g).)

Existing law requires CDCR to take all reasonable corrective actions if the available technology to prevent wireless communications from sending and receiving telephone calls or other forms of electronic communication extends beyond the secure perimeter of the prison or institution. (Pen. Code, § 4576, subd. (h).)

Existing law states that any contractor or employee of a contractor or CDCR who knowingly and willfully, without authorization, obtains, discloses, or uses confidential information in violation the provisions of law prohibiting capture and access of data shall be subject to an administrative fine or civil penalty not to exceed \$5,000 for a first violation, or \$10,000 for a second violation, or \$25,000 for a third or subsequent violation. (Pen. Code, § 4576, subd. (i).)

Existing law specifies that nothing in these provisions of law prohibits CDCR from obtaining electronic communications that the department could have lawfully obtained prior to the effective date of those provisions. (Pen. Code, § 4576, subd. (j).)

This bill provides that any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into, any county juvenile hall, ranch, camp, or forestry camp a wireless communication device, including, but not limited to, a cellular telephone or watch, pager, or other wireless internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.

COMMENTS

1. Need for This Bill

According to the author:

Current law, Penal Code 4575, prohibits unauthorized persons from bringing or sending electronic devices into a “local correctional facility.” However, “local correctional facility” is not clearly defined to also include juvenile halls, camps, and ranches.

Probation is responsible for the administration and operation of local juvenile facilities and the care, safety, and security of youth and staff is of the utmost importance. There have been instances of youth obtaining cell phones and using them for purposes that detract from the rehabilitative and treatment work such as contacting witnesses and victims and posting information about themselves or other youth on social media. Unauthorized access to cell phones and social media via cell phones can be very detrimental to youth and others. In order to uphold the safety and security of our youth, it is important California law is clarified to ensure county juvenile facilities are expressly listed as a facility in which the possession of unauthorized electronic devices is prohibited.

2. Existing Penalties for Wireless Devices in Correctional Facilities

The current statute that prohibits any person in a local correctional facility from possessing a wireless communication device, including, but not limited to, a cell phone, pager, or wireless Internet device, and who is not authorized to possess that item, was enacted by SB 655 (Margett), Chapter 655, Statutes of 2007. That bill established the offense as a misdemeanor punishable by a fine of up to \$1,000. In response to an increasing number of cell phones in the state’s prisons, SB 26 (Padilla), Chapter 500, Statutes of 2011, was enacted. SB 26 made it a misdemeanor for a person to possess a cell phone or other wireless communication device with the intent to deliver, or who actually delivers a cell phone or other wireless communication device, to an inmate or ward in the custody of CDCR. That offense is punishable by imprisonment in the county jail for up to six months, a fine up to \$5,000 for each device, or both.

3. Effect of This Bill

The sponsor of the bill argues that this bill is necessary because juvenile facilities are not expressly included in Penal Code section 4575. Penal Code section 4575 provides:

“[A]ny person in a local correctional facility who possesses a wireless communication device, including, but not limited to, a cellular telephone, pager, or wireless Internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.” The term “local correctional facility” is not defined in the Penal Code. However, Penal Code section 6031.4, subdivision (b), provides the following definition for “local detention facility”:

“[A]ny city, county, city and county, or regional facility, . . . used for the confinement, regardless of the length of confinement, of adults or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.”

The California Code of Regulations provides a similar definition of “local detention facility”:

“[A]ny city, county, city and county, or regional jail, camp, court holding facility, or other correctional facility, whether publicly or privately operated, used for confinement of adults or of both adults and minors, but does not include that portion of a facility for confinement of both adults and minors which is devoted only to the confinement of minors.” (Cal. Code of Regs, tit. 15, § 1006.)

The California Code of Regulations defines “juvenile facility” as “a juvenile hall ranch or camp, forestry camp, regional youth education facility, boot camp or special purpose juvenile hall.” (Cal. Code of Regs, tit. 15, § 1302.) Given that the term “local correctional facility” does not explicitly include county juvenile facilities, and the term “local detention facility” specifically excludes juvenile facilities, there is arguably an ambiguity in the law with respect to whether county juvenile facilities are covered by Penal Code section 4575.

This bill amends Welfare and Institutions Code section 871.5 to add the following language:

“Any person who *knowingly brings or sends into, or who knowingly assists in bringing into, or sending into*, any county juvenile hall, ranch, camp, or forestry camp a wireless communication device, including, but not limited to, a cellular telephone or watch, pager, or other wireless internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000).”

This language mirrors the language in some of the other subdivisions of section 871.5 that prohibit various items from being brought or sent into a county juvenile facility. The language in this bill is arguably both narrower and broader than the language in Penal Code section 4575. The language in this bill includes a knowledge requirement that is absent in Penal Code section 4575—which only requires possession of a cell phone or other wireless communication device in order to be guilty of a crime—making it narrower than the Penal Code section 4575. However, to the extent that “bringing [a wireless communication device] into” a county juvenile facility covers roughly the same conduct as “possession” of a wireless communication device, the

language in this bill pertaining to a person who “sends [a wireless communication device] into” a county juvenile facility appears to describe conduct not included in Penal Code section 4575

Notably, both Penal Code section 4575 and this bill lack language requiring an intent to deliver the cell phone or wireless communication device to an inmate or ward, or actually delivering the device to an inmate or ward, as is found in Penal Code section 4576. If the primary concern with cell phones and other communication devices in correctional facilities is that they may be used by inmates or wards to harass victims or to coordinate violence inside or outside of a correctional facility, then committee members may wish to consider whether the language in this bill should more closely resemble the language in Penal Code section 4576 requiring that a person has the intent to bring or send a wireless communication device into a juvenile facility with the intent to deliver the device to a ward.

4. Argument in Support

According to the bill’s sponsor, the Chief Probation Officers of California:

SB 694...would clarify that unauthorized persons are prohibited from sending or bringing wireless devices into county juvenile halls, camps and ranches.

Probation departments are responsible for the administration and operation of local juvenile facilities and the care, safety, and security of youth and staff is of the utmost importance. In recent years, there have been instances of youth obtaining cell phones and using them for purposes that detract from the rehabilitative and treatment work while under our care. Issues have arisen such as, but not limited to, contacting witnesses and victims and posting information about themselves or other youth on social media. ...

Welfare and Institutions Code 871.5 sets forth prohibitions for bringing items into county juvenile facilities. Further, Penal Code 4575 already prohibits unauthorized persons from bringing or sending wireless communication devices into a local correctional facility. However, it is not expressly noted that juvenile facilities are included within the definition of “local correctional facility.”

SB 694 clarifies the prohibition for unauthorized persons to bring or send wireless communication devices into county juvenile facilities in order to promote a safe and secure environment for youth in our care.

5. Argument in Opposition

The ACLU of California writes:

First, the scope of the bill is vague and confusing. SB 694 would make it a crime for a person to bring or send, or assist in bringing or sending, into a juvenile facility a wireless communications device when *the person is not authorized to possess the item*. With very few exceptions, people are generally authorized to possess wireless communications devices. The legal circumstances under which a person is not authorized to possess a wireless communications device, include 1) when the wireless communications device is stolen property; 2) when, due to the person’s confinement in a state prison, county jail, state hospital, or other locked

facility, the wireless communications device is considered contraband or is an otherwise prohibited item; and 3) when a person is visiting or otherwise present in a state prison, county jail, or state hospital and is not authorized to possess a wireless communications device. While not prohibited by California law, there are any number of other situations in which a person is not authorized to be in possession of a cell phone, for example while in a federal courtroom, or as a student while in a classroom. As drafted, SB 694 does not make clear how the 'unauthorized possession' element of the bill is meant to operate and to whom the bill would apply.

Second, the bill is unnecessary. It is already a misdemeanor to be in possession of a wireless communications device without authorization while in a juvenile facility, and it is also illegal to aid and abet someone in their unauthorized possession of such a device. Thus under current law, as soon as a person brings a wireless communications device into a juvenile facility, their possession of that device is already a crime. There is no reason to complicate existing law with a new crime.

It is also unnecessary to create a new crime for sending or assisting with sending a wireless communications device into a juvenile facility. Juvenile facilities already have procedures in place to assure that unauthorized wireless communications devices, if sent, are not distributed within the facility. With limited exceptions for legal mail and other protected correspondence, most of the mail sent into juvenile facilities is reviewed by facility staff before it reaches its intended recipients. Such procedures allow for the early detection of wireless communications devices and remove any potential adverse effects such a device may have on the program objectives or institutional security of a facility. While existing law does criminalize the act of sending into a juvenile facility any controlled substance, firearm, weapon, explosive, tear gas or tear gas weapon, or alcohol, these items could "by [their] very nature be injurious to persons or property," even prior to their detection during a mail review. As such these items, unlike wireless communications devices, require heightened protection.

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