

AMENDED IN ASSEMBLY JULY 13, 2011  
AMENDED IN ASSEMBLY JUNE 14, 2011  
AMENDED IN SENATE MARCH 30, 2011  
AMENDED IN SENATE FEBRUARY 1, 2011

**SENATE BILL**

**No. 26**

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**Introduced by Senator Padilla  
(Coauthors: Senators Anderson, Calderon, Fuller, Harman, and  
Walters)**

December 6, 2010

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An act to add Section 4576 to the Penal Code, relating to prisons.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Padilla. Prisons: wireless communication devices.

Existing law prohibits unauthorized communication with inmates in state prison. A person who violates that provision is guilty of a misdemeanor. Existing law further prohibits a person in a local correctional facility from possessing a wireless communication device, except as specified.

This bill would provide, with exceptions, that a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the department any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module or memory storage device, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding 6 months, a fine not to exceed \$5,000 for each device, or both that fine and imprisonment.

This bill would provide that if a person who is visiting an inmate or ward under the jurisdiction of the Department of Corrections and

Rehabilitation is found to be in possession of a cellular telephone, wireless communication device, or any component thereof, upon being searched or subjected to a metal detector, that device is subject to confiscation and would be returned the same day, except as specified. The bill would require that a notice to that effect be posted in each area where visitors are searched prior to visiting with an inmate or ward.

The bill would provide that a person who brings, without authorization, a wireless communication device onto the grounds of a prison or institution housing offenders under the jurisdiction of the department is deemed to have consented to the department using available technology to prevent the device from sending or receiving calls or other electronic communication, and would require notice of this provision to be posted at all public entry gates.

Existing law provides for the accumulation, denial, or loss of time credits for inmates of the department based on each inmate's behavior while under the jurisdiction of the department.

The bill would provide that an inmate who is found to be in possession of a wireless communication device would be subject to the denial of time credits, as specified. ~~The bill would also provide that a ward who is found to be in possession of a wireless communication device shall have his or her discharge consideration date extended, as provided. The bill would prohibit the department from accessing data or communications that have been captured using available technology from unauthorized use of a wireless communication device except after obtaining a valid search warrant.~~

Because the bill would create a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4576 is added to the Penal Code, to read:
- 2 4576. (a) Except as otherwise authorized by law, or when
- 3 authorized by either the person in charge of the prison or other

1 institution under the jurisdiction of the Department of Corrections  
2 and Rehabilitation or an officer of the institution empowered to  
3 give that authorization, a person who possesses with the intent to  
4 deliver, or delivers, to an inmate or ward in the custody of the  
5 department any cellular telephone or other wireless communication  
6 device or any component thereof, including, but not limited to, a  
7 subscriber identity module (SIM card) or memory storage device,  
8 is guilty of a misdemeanor, punishable by imprisonment in the  
9 county jail not exceeding six months, a fine not to exceed five  
10 thousand dollars (\$5,000) for each device, or both that fine and  
11 imprisonment.

12 (b) (1) If a person visiting an inmate or ward in the custody of  
13 the department, upon being searched or subjected to a metal  
14 detector, is found to be in possession of a cellular telephone or  
15 other wireless communication device or any component thereof,  
16 including, but not limited to, a SIM card or memory storage device,  
17 that device or component shall be subject to confiscation but shall  
18 be returned on the same day the person visits the inmate or ward,  
19 unless the cellular telephone or other wireless communication  
20 device or any component thereof is held as evidence in a case  
21 where the person is cited for a violation of subdivision (a).

22 (2) If, upon investigation, it is determined that no prosecution  
23 will take place, the cellular telephone or other wireless  
24 communication device or any component thereof shall be returned  
25 to the owner at the owner's expense.

26 (3) Notice of this provision shall be posted in all areas where  
27 visitors are searched prior to visitation with an inmate or ward in  
28 the custody of the department.

29 (c) ~~(†)~~ Any inmate who is found to be in possession of a  
30 wireless communication device shall be subject to time credit  
31 denial or loss pursuant to paragraph (2) of subdivision (a) of  
32 Section 2932. Notwithstanding Section 2933, credits forfeited  
33 pursuant to this section shall not be eligible for restoration.

34 ~~(2) Any ward who is found to be in possession of a wireless~~  
35 ~~communication device shall have his or her discharge consideration~~  
36 ~~date extended pursuant to subdivision (e) of Section 1719 of the~~  
37 ~~Welfare and Institutions Code.~~

38 (d) A person who brings, without authorization, a wireless  
39 communication device onto the grounds of any prison or institution  
40 housing offenders under the jurisdiction of the department is

1 deemed to have given his or her consent to the department using  
2 available technology to prevent that wireless device from sending  
3 or receiving telephone calls or other forms of electronic  
4 communication. Notice of this provision shall be posted at all  
5 public entry gates of the prison or institution.

6 *(e) The department shall not access data or communications*  
7 *that have been captured using available technology from*  
8 *unauthorized use of a wireless communication device except after*  
9 *obtaining a valid search warrant.*

10 *(f) Nothing in this section prohibits the department from*  
11 *obtaining electronic communications that the department could*  
12 *have lawfully obtained prior to the effective date of this section.*

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.