

Senate Bill No. 26

Passed the Senate September 8, 2011

Secretary of the Senate

Passed the Assembly September 7, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 4576 to the Penal Code, relating to prisons, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 26, 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.

By creating a new crime, the bill would impose a state-mandated local program.

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 within the secure perimeter 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 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, and would provide that any contractor or employee of a contractor or the department who knowingly and willfully, without authorization, obtains, discloses, or uses, confidential data or communications from an unauthorized wireless communication device is subject to an administrative fine or civil penalty not to exceed \$5,000 for a first violation, \$10,000 for a 2nd violation, and \$25,000 for a 3rd or subsequent violation.

The bill would further prohibit the department from capturing data or communications from an authorized wireless communication device, or accessing data or communications that have been captured from an authorized wireless communication device, except as authorized under existing law. The bill would provide that any contractor or employee of a contractor or the department who knowingly and willfully, without authorization, obtains, discloses, or uses, confidential data or communications from an authorized wireless communication device is subject to an administrative fine or civil penalty not to exceed \$5,000 for a first violation, \$10,000 for a 2nd violation, and \$25,000 for a 3rd or subsequent violation.

The bill would also provide that until January 1, 2018, the state shall require as part of the contract for the Inmate Ward Telephone System that the total cost for intrastate and interstate calls be equal to or less than the total costs of a call established in the contract in effect on September 1, 2011, and that other than the conversation minute charges and prepaid account setup fees, there shall be no additional charges of any type, including administrative fees, call-setup fees, detail billing fees, hard copy billing fees, or any other fees.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 4576 is added to the Penal Code, to read:

4576. (a) Except as otherwise authorized by law, or when authorized by either the person in charge of the prison or other institution under the jurisdiction of the Department of Corrections and Rehabilitation or an officer of the institution empowered to give that authorization, 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 (SIM card) or memory storage device, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, a fine not to exceed five thousand dollars (\$5,000) for each device, or both that fine and imprisonment.

(b) (1) If a person visiting an inmate or ward in the custody of the department, 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, including, but not limited to, a SIM card or memory storage device, 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 violation of subdivision (a).

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

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

(c) 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.

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

(e) The department shall not access 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.

(f) The department shall not capture data or communications from an authorized wireless communication device, except as already authorized under existing law.

(g) The department shall not access data or communications that have been captured using available technology from an authorized wireless communication device, except as already authorized under existing law.

(h) 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, the department shall take all reasonable actions to correct the problem.

(i) Any contractor or employee of a contractor or the department who knowingly and willfully, without authorization, obtains, discloses, or uses confidential information in violation of subdivision (e), (f), or (g) shall be subject to an administrative fine or civil penalty not to exceed five thousand dollars (\$5,000) for a first violation, or ten thousand dollars (\$10,000) for a second violation, or twenty-five thousand dollars (\$25,000) for a third or subsequent violation.

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

SEC. 2. Until January 1, 2018, the state shall require as part of the contract for the Inmate Ward Telephone System that the total cost for intrastate and interstate calls be equal to or less than the total costs of a call established in the contract in effect on September 1, 2011. Other than the conversation minute charges and prepaid account setup fees, there shall be no additional charges of any type, including administrative fees, call-setup fees, detail billing fees, hard copy billing fees, or any other fees.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the smuggling of wireless communication devices into prisons and to prevent the commission of future crimes involving those devices at the earliest possible time, it is necessary that this act take effect immediately.

Approved _____, 2011

Governor