WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED

Senate Bill No. 521
(By Senators Laird, Foster and Green)

[Passed April 10, 2009; in effect ninety days from passage.]
AN ACT to amend and reenact §61-5-8 of the Code of West Virginia, 1931, as amended, relating to adding telecommunications devices to items which cannot be brought into a jail or correctional facility.

Be it enacted by the Legislature of West Virginia:

That §61-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center, if any other person delivers anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult’s or juvenile’s escape or attempted escape therefrom, or if the other person forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty of a felony and, upon
conviction thereof, shall be confined in a state correctional
facility not less than one nor more than ten years.

(b) Where any adult or juvenile is lawfully detained in
custody or confinement in any jail, a state correctional
facility or a juvenile facility or juvenile detention center,
if any other person delivers any money or other thing of
value, any written or printed matter, any article of mer-
chandise, food or clothing, any medicine, utensil or
instrument of any kind to the adult or juvenile without the
express authority and permission of the supervising officer
and with knowledge that the adult or juvenile is lawfully
detained, the other person is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not less than $50
nor more than $500 and confined in jail not less than three
nor more than twelve months: Provided, That the provi-
sions of this section do not prohibit an attorney or his or
her employees from supplying any written or printed
material to an adult or juvenile which pertains to that
attorney's representation of the adult or juvenile.

(c) (1) If any person transports any alcoholic liquor,
nonintoxicating beer, poison, implement of escape,
dangerous material, weapon, or any controlled substance
as defined by chapter sixty-a of this code onto the grounds
of any jail, state correctional facility, juvenile facility or
juvenile detention center within this state and is unautho-
rized by law to do so, or is unauthorized by the persons
supervising the facility, the person is guilty of a felony
and, upon conviction thereof, shall be fined not less than
$1,000 nor more than $5,000 or confined in a state correc-
tional facility not less than two years nor more than ten
years, or both, or, in the discretion of the court, be con-
fined in jail not more than one year and fined not more
than $500.

(2) If any person willfully and knowingly transports or
causes to be transported any telecommunications device
into or upon any portion of any jail, state correctional
facility, juvenile facility or juvenile detention center
within this state that is not generally open and accessible
to members of the public without prior approval from the
warden/administrator or designee and such person is
unauthorized by law to do so, or is unauthorized by the
persons supervising the facility, the person is guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than $100 nor more than $500 or confined in jail
not more than one year or both fined and confined.

(d) If any person delivers any alcoholic liquor, nonin-
toxicating beer, poison, implement of escape, dangerous
material, weapon or any controlled substance as defined
by chapter sixty-a of this code to an adult or juvenile in
custody or confinement in any jail, state correctional
facility, juvenile facility or juvenile detention center
within this state and is unauthorized by law to do so, or is
unauthorized by the persons supervising the facility, the
person is guilty of a felony and, upon conviction thereof,
shall be fined not less than $1,000 nor more than $5,000 or
confined in a state correctional facility not less than one
year nor more than five years, or both.

(e) Whoever purchases, accepts as a gift or secures by
barter, trade or in any other manner any article or articles
manufactured at or belonging to any jail, state correc-
tional facility, juvenile facility or juvenile detention center
from any adult or juvenile detained therein is guilty of a
misdemeanor and, upon conviction thereof, shall be fined
not less than $50 nor more than $500 and confined in jail
not less than three nor more than twelve months: Pro-
vided, That the provisions of this subsection do not apply
to articles specially manufactured in any facility under the
authorization of the persons supervising the facility and
which are offered for sale within or outside of the facility.

(f) Whoever persuades, induces or entices or attempts to
persuade, induce or entice any person who is in custody or
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confined in any jail, state correctional facility, juvenile
facility or juvenile detention center to escape therefrom or
to engage or aid in any insubordination to the persons
supervising the facility is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not less than $50
nor more than $500 and confined in jail not less than three
nor more than twelve months.

(g) (1) An inmate of a jail, state correctional facility,
juvenile facility or juvenile detention center having in his
or her possession any poison, implement of escape, danger-
ous material, weapon, telecommunications device or any
controlled substance as defined by chapter sixty-a of this
code is guilty of a felony and, upon conviction thereof,
shall be fined not less than $1,000 nor more than $5,000 or
confined in a state correctional facility not less than one
year nor more than five years, or both, or, in the discretion
of the court, be confined in jail not more than one year and
fined not more than $500.

(2) An inmate of a jail, state correctional facility,
juvenile facility or juvenile detention center having in his
or her possession any alcoholic liquor, nonintoxicating
beer, money or other thing of value, any written or printed
matter, any article of merchandise, food or clothing, any
medicine, utensil or instrument of any kind without the
express authority and permission of the supervising officer
is guilty of a misdemeanor and, upon conviction thereof,
shall be fined not less than $50 nor more than $500 and
confined in jail not more than twelve months.

(h) As used in this section:

(1) “Dangerous material” means any incendiary mate-
rial or device, highly flammable or caustic liquid, explo-
sive, bullet or other material readily capable of causing
death or serious bodily injury.

(2) “Delivers” means to transfer an item to an adult or
juvenile who is detained in custody or confinement in any
jail, correctional facility, juvenile facility or juvenile
detention center or a building appurtenant to those places. The term includes bringing the item into a jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes putting an item in a place where it may be obtained by an inmate.

(3) “Inmate” means an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center, regardless of whether the individual is temporarily absent due to medical treatment, transportation, court appearance or other reason for a temporary absence.

(4) “Implement of escape” means a tool, implement, device, equipment or other item which an inmate is not authorized to possess capable of facilitating, aiding or concealing an escape or attempted escape by an inmate.

(5) “Telecommunication device” means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications regardless of whether the part itself is able to transmit. The term includes, but is not limited to, cellular phones, digital phones and modem equipment devices.

(6) “Weapon” means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which has been modified or adapted so that it can be used as a firearm, knife, dagger, razor, other cutting or stabbing implement or club. For purposes of this definition, the term “firearm” includes an unloaded firearm or the unassembled components of a firearm.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 13th Day of

Governor

2009.