

SB 521

FILED

2009 MAY 13 PM 4: 52

WEST VIRGINIA LEGISLATURE
SECRETARY OF STATE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

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ENROLLED

Senate Bill No. 521

(BY SENATORS LAIRD, FOSTER AND GREEN)

[Passed April 10, 2009; in effect ninety days from passage.]

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(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.

1 (a) Where any adult or juvenile is lawfully detained in
2 custody or confinement in any jail, state correctional
3 facility, juvenile facility or juvenile detention center, if
4 any other person delivers anything into the place of
5 custody or confinement of the adult or juvenile with the
6 intent to aid or facilitate the adult's or juvenile's escape or
7 attempted escape therefrom, or if the other person forcibly
8 rescues or attempts to rescue an adult or a juvenile
9 therefrom, the other person is guilty of a felony and, upon

10 conviction thereof, shall be confined in a state correctional
11 facility not less than one nor more than ten years.

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

29 (c) (1) If any person transports any alcoholic liquor,
30 nonintoxicating beer, poison, implement of escape,
31 dangerous material, weapon, or any controlled substance
32 as defined by chapter sixty-a of this code onto the grounds
33 of any jail, state correctional facility, juvenile facility or
34 juvenile detention center within this state and is unautho-
35 rized by law to do so, or is unauthorized by the persons
36 supervising the facility, the person is guilty of a felony
37 and, upon conviction thereof, shall be fined not less than
38 \$1,000 nor more than \$5,000 or confined in a state correc-
39 tional facility not less than two years nor more than ten
40 years, or both, or, in the discretion of the court, be con-
41 fined in jail not more than one year and fined not more
42 than \$500.

43 (2) If any person willfully and knowingly transports or
44 causes to be transported any telecommunications device

45 into or upon any portion of any jail, state correctional
46 facility, juvenile facility or juvenile detention center
47 within this state that is not generally open and accessible
48 to members of the public without prior approval from the
49 warden/administrator or designee and such person is
50 unauthorized by law to do so, or is unauthorized by the
51 persons supervising the facility, the person is guilty of a
52 misdemeanor and, upon conviction thereof, shall be fined
53 not less than \$100 nor more than \$500 or confined in jail
54 not more than one year or both fined and confined.

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

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

79 (f) Whoever persuades, induces or entices or attempts to
80 persuade, induce or entice any person who is in custody or

81 confined in any jail, state correctional facility, juvenile
82 facility or juvenile detention center to escape therefrom or
83 to engage or aid in any insubordination to the persons
84 supervising the facility is guilty of a misdemeanor and,
85 upon conviction thereof, shall be fined not less than \$50
86 nor more than \$500 and confined in jail not less than three
87 nor more than twelve months.

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

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

109 (h) As used in this section:

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

114 (2) "Delivers" means to transfer an item to an adult or
115 juvenile who is detained in custody or confinement in any
116 jail, correctional facility, juvenile facility or juvenile

117 detention center or a building appurtenant to those places.
118 The term includes bringing the item into a jail, correc-
119 tional facility, juvenile facility or juvenile detention center
120 or a building appurtenant to those places. The term
121 includes putting an item in a place where it may be
122 obtained by an inmate.

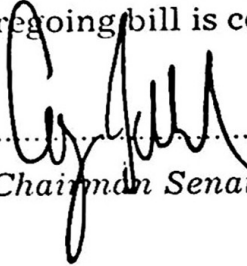
123 (3) "Inmate" means an adult or juvenile who is detained
124 in custody or confinement in any jail, correctional facility,
125 juvenile facility or juvenile detention center, regardless of
126 whether the individual is temporarily absent due to
127 medical treatment, transportation, court appearance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

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

133 (5) "Telecommunication device" means any type of
134 instrument, device, machine or equipment which is
135 capable of transmitting telephonic, electronic, digital,
136 cellular or radio communications or any part of an instru-
137 ment, device, machine or equipment which is capable of
138 facilitating the transmission of telephonic, electronic,
139 digital, cellular or radio communications regardless of
140 whether the part itself is able to transmit. The term
141 includes, but is not limited to, cellular phones, digital
142 phones and modem equipment devices.

143 (6) "Weapon" means an implement readily capable of
144 lethal use and includes any firearm, knife, dagger, razor,
145 other cutting or stabbing implement or club. The term
146 includes any item which has been modified or adapted so
147 that it can be used as a firearm, knife, dagger, razor, other
148 cutting or stabbing implement or club. For purposes of
149 this definition, the term "firearm" includes an unloaded
150 firearm or the unassembled components of a firearm.

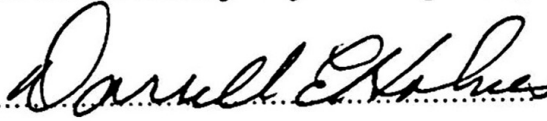
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee



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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within *is approved* this the *13th*

Day of *May* 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY · 8 2009

Time 10:35h