COMMITTEE REPORT

May 8, 2019

**S. 156**

Introduced by Senators Allen, Turner and Martin

S. Printed 5/8/19--H.

Read the first time March 7, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 156) to amend the Code of Laws of South Carolina, 1976, by adding Section 24‑3‑975 so as to provide that, under certain circumstances, it is unlawful, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, Section 24‑3‑975(B), as contained in SECTION 1, by deleting Section 24‑3‑975(B) and inserting:

/(B) Except as authorized by the appropriate official in charge of the correctional institution, it is unlawful to possess within or to introduce into or upon the grounds of any state correctional institution, county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility any telecommunication device. This prohibition does not apply to devices contained within vehicles that are in designated parking areas or vehicles traveling on the grounds unless with the intent to furnish the telecommunication device to any inmate. /

Amend the bill further, as and if amended, by adding the following appropriately numbered SECTION:

/SECTION \_\_\_. Title 24 of the 1976 Code is amended by adding:

“CHAPTER 4

Contraband Cell Phones

Section 24‑4‑10. This chapter may be cited as the ‘Contraband Cell Phone Act’.

Section 24‑4‑20. As used in this chapter:

(1) ‘Contraband Cell Phone’ means a cellular telephone or device possessed or used by an incarcerated or detained individual in violation of any applicable South Carolina law or policy governing a prison or local detention facility in the State of South Carolina.

(2) ‘Supervising Law Enforcement Officer’ means a supervisor of any law enforcement agency in the State of South Carolina, including, but not limited to, the South Carolina Law Enforcement Division, the Police Services Division of the South Carolina Department of Corrections, or any other recognized state or federal law enforcement agency.

(3) ‘Prison’ means any South Carolina Department of Corrections facility used for the detention of persons charged with or convicted of a felony, misdemeanor, local ordinance, or violation of a court order.

(4) ‘Local Detention Facility’ means any municipal, county, or multijurisdictional jail, prison camp, or overnight lockup used for the detention of persons charged with or convicted of a felony, misdemeanor, local ordinance, or violation of a court order.

(5) ‘Cellular Service Provider’ means any wireless telecommunication company providing service to cellular telephones in the State of South Carolina.

(6) International Mobile Equipment Identity (IMEI) is a fifteen‑ or seventeen‑digit decimal code that uniquely identifies mobile devices operating on GSM networks.

(7) Mobile Equipment Identifier (MEID) is a fourteen‑digit hexadecimal code that uniquely identifies mobile devices operating on CDMA networks.

(8) Electronic Serial Number (ESN) is an eight‑digit hexadecimal code that uniquely identifies mobile devices operating on CDMA networks.

(9) GSMA device check database is a global database containing information on millions of mobile devices, including those reported as stolen or lost by participating operators.

Section 24‑4‑30. When a supervising law enforcement officer has reasonable suspicion to believe that one or more contraband cell phones exists in a prison or local detention facility, the supervising law enforcement officer may authorize and approve the use of any electronic device, or other means, to detect and confirm the presence of contraband cell phones and to detect any and all identifiers associated with the contraband cell phones.

Section 24‑4‑40. When a supervising law enforcement officer has confirmed the presence of one or more contraband cell phones in a prison or detention facility by any means authorized by Section 24‑4‑30 or any other lawful means, the officer may apply or cause to be applied for an *ex parte* order from any circuit court in the State requesting the suspension or discontinuation of service for any and all contraband cell phones that the supervising law enforcement officer is able to identify. The application must set forth the probable cause grounds on which the application is based and must contain sufficient identifiers for the contraband cell phones.

Section 24‑4‑50. (A) Upon receipt of an application from a supervising law enforcement officer, the circuit courts of this State are authorized to issue an *ex parte* order requiring cellular service providers to immediately suspend or discontinue the cellular service provided to the identified contraband cell phones. The circuit court shall maintain the original order.

(B) The court, upon request of the applicable law enforcement agency, also may prohibit the disclosure of the existence of an order authorized by subsection (A). in any manner and under such circumstances deemed appropriate by the court. However, a cellular service provider may disclose the existence of an order to a subscriber whose service was interrupted as a result of the order and who is inquiring about why service was interrupted.

(C) All circuit courts in this State have jurisdiction and venue to issue an order authorized by subsection (A).

Section 24‑4‑60. Upon receipt of an order to immediately suspend or discontinue the cellular service provided to an identified contraband cell phone from a circuit court in this State, a cellular service provider must discontinue the cellular service to any and all identified contraband cell phones as soon as is practicable, which shall include reporting phone identifiers to the GSMA device check database, or by any other reasonable means. However, if reporting a particular mobile device identifier (IMEI, MEID, ESN, etc.) to the GSMA database may impact devices not identified as contraband, the cellular service provider is not required to report that mobile device identifier to the GSMA database.

Section 24‑4‑70. (A) If the cellular service subscriber whose cellular service is affected by an order issued pursuant to this chapter deems it necessary to challenge the suspension or discontinuation of service, he must appear personally before the cellular service provider with the cell phone in question and with proof of identification that must contain a photograph and list a physical address. The subscriber must request reinstatement of the cellular service to the phone in question. The request must contain the name and the physical and billing address of the person making the request.

(B) Upon receipt of a request for reinstatement that complies with subsection (A), the cellular service provider may reinstate service to that cell phone if it reasonably appears that the service was suspended or discontinued in error. In the event of reinstatement, the cellular service provider must provide the supervising law enforcement officer and the prison or local detention facility with written notice after the reinstatement, which notice shall include the date and time of the reinstatement and the name and address of the requestor. If, after review of the request, the supervising law enforcement officer or anyone at the prison or local detention facility objects to the reinstatement, a subsequent order may be sought pursuant to Section 24‑4‑50.

(C) If the supervisory law enforcement officer receives a complaint regarding the suspension or discontinuance of cellular service to any cell phone identified as a contraband cell phone in connection with this chapter, the officer may conduct further investigation and confirmation of contraband devices in question and may seek an order reinstating the cellular service to the phone in question.

Section 24‑4‑80. (A) No cause of action lies in any court against any cellular service provider, its officers, employees, agents, or any other specified persons for discontinuing service and/or providing assistance in accordance with the terms of a court order under this chapter.

(B) An appointed or elected public official, public employee, public agency, or supervisory law enforcement officer is immune from civil liability for damages for any act or omission under this article.

(C) A good faith reliance on a court order issued under this chapter is a complete defense against any civil or criminal action brought under any provision of law.” /

Renumber sections to conform.

Amend title to conform.

PETER M. MCCOY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24‑3‑975 SO AS TO PROVIDE THAT, UNDER CERTAIN CIRCUMSTANCES, IT IS UNLAWFUL TO POSSESS WITHIN OR INTRODUCE UPON THE GROUNDS OF A CORRECTIONAL FACILITY A TELECOMMUNICATION DEVICE, TO DEFINE THE TERM “TELECOMMUNICATION DEVICE”, AND TO PROVIDE A PENALTY FOR A VIOLATION OF THIS PROVISION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 9, Chapter 3, Title 24 of the 1976 Code is amended by adding:

“Section 24‑3‑975. (A) For purposes of this section, a ‘telecommunication device’ means a device, an apparatus associated with a device, or a component of a device that enables, or may be used to enable, communication with a person inside or outside of a place of incarceration. Such devices include, but are not limited to, portable two‑way pagers, handheld radios, cellular telephones, personal digital assistants or PDAs, laptop computers, or any components of these devices. ‘Telecommunication device’ also includes any new technology that is developed or used for similar purposes.

(B) Except as authorized by the appropriate official in charge of the correctional institution, it is unlawful to possess within or to introduce into or upon the grounds of any state correctional institution, county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility any telecommunication device. This prohibition does not apply to devices contained within vehicles that are in designated parking areas or vehicles traveling on the grounds.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than three years and forfeits all earned work credits, education credits, and good conduct credits.”

SECTION 2. This act takes effect upon approval by the Governor.

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