

AMENDED IN ASSEMBLY MARCH 10, 2010

AMENDED IN ASSEMBLY JULY 1, 2009

AMENDED IN SENATE MAY 6, 2009

SENATE BILL

No. 268

Introduced by Senator Harman

February 24, 2009

An act to amend Section 11834.03 of the Health and Safety Code, relating to alcohol and drug programs; add Section 4576 to the Penal Code, relating to correctional facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 268, as amended, Harman. ~~Alcoholism or drug abuse recovery or treatment facilities; licensing. Correctional facilities; wireless communication devices.~~

Existing law establishes various offenses relating to the unauthorized provision of specified items to persons confined in local and state correctional facilities.

This bill would provide, subject to exceptions, that any inmate or ward who possesses 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, or any person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of the Department of Corrections and Rehabilitation any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a SIM card or memory storage device, is guilty of a misdemeanor, punishable by a fine not exceeding \$5,000. The bill would also provide that if a person visiting an inmate or ward 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, when searched or subjected to a metal detector, as specified, that cellular telephone or wireless communication device or component shall be subject to confiscation. The bill would require posted notices regarding those search and confiscation provisions, as specified.

By creating a new crime, this 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.

~~Existing law provides for the licensure, certification, and regulation of alcoholism or drug abuse recovery or treatment facilities serving adults, administered by the State Department of Alcohol and Drug Programs. Under existing law, an applicant for a license is required to submit to the department, among other things, a completed written application and an approved fire clearance.~~

~~This bill would require the application to include a certification that the proposed facility complies with local zoning or is a legal nonconforming use. It would also require the department to ensure that the license application contains a clear reference to statutory requirements under which a drug abuse recovery or treatment facility that serves 6 or fewer persons is considered a residential use of property.~~

~~This bill would make an approved fire clearance for a drug abuse recovery or treatment facility serving 7 or more persons valid only for the duration of the 2-year term of the license. This bill would require a drug abuse recovery or treatment facility serving 7 or more persons that applies for license renewal to obtain a new fire clearance, as prescribed.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no-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 the person in charge of the prison or other institution

1 *subject to this section or by an officer of the institution empowered*
2 *to give that authorization, and except as provided in subdivision*
3 *(b), any inmate or ward who possesses any cellular telephone or*
4 *other wireless communication device or any component thereof,*
5 *including, but not limited to, a subscriber identity module (SIM*
6 *card) or memory storage device, or any person who possesses with*
7 *the intent to deliver, or delivers, to an inmate or ward in the*
8 *custody of the Department of Corrections and Rehabilitation any*
9 *cellular telephone or other wireless communication device or any*
10 *component thereof, including, but not limited to, a SIM card or*
11 *memory storage device, is guilty of a misdemeanor, punishable by*
12 *a fine not to exceed five thousand dollars (\$5,000).*

13 *(b) If a person visiting an inmate or ward in the custody of the*
14 *department, upon being searched or subjected to a metal detector,*
15 *is found to be in possession of a cellular telephone or other wireless*
16 *communication device or any component thereof, including, but*
17 *not limited to, a SIM card or memory storage device, that device*
18 *or component shall be subject to confiscation. Notice of this*
19 *provision shall be posted in all areas where visitors are searched*
20 *prior to visitation with an inmate or ward in the custody of the*
21 *department.*

22 *SEC. 2. No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution because*
24 *the only costs that may be incurred by a local agency or school*
25 *district will be incurred because this act creates a new crime or*
26 *infraction, eliminates a crime or infraction, or changes the penalty*
27 *for a crime or infraction, within the meaning of Section 17556 of*
28 *the Government Code, or changes the definition of a crime within*
29 *the meaning of Section 6 of Article XIII B of the California*
30 *Constitution.*

31 ~~SECTION 1. Section 11834.03 of the Health and Safety Code~~
32 ~~is amended to read:~~

33 ~~11834.03. Any person or entity applying for licensure shall~~
34 ~~file with the department, on forms provided by the department, all~~
35 ~~of the following:~~

36 ~~(a) A completed written application for licensure that includes~~
37 ~~a certification by the applicant that the proposed facility complies~~
38 ~~with local zoning or is a legal nonconforming use. The department~~
39 ~~shall ensure that the license application contains a clear reference~~
40 ~~to Section 11834.23 and its requirement that a drug abuse recovery~~

1 ~~or treatment facility that serves six or fewer persons shall be~~
2 ~~considered a residential use of property.~~

3 ~~(b) A fire clearance approved by the State Fire Marshal or local~~
4 ~~fire prevention officer. If a drug abuse recovery or treatment facility~~
5 ~~serves seven or more persons, this clearance shall be valid for the~~
6 ~~two-year licensure term and shall expire at the conclusion of the~~
7 ~~term. Any license renewal by a drug abuse recovery or treatment~~
8 ~~facility serving seven or more persons shall include a fire clearance~~
9 ~~approved by the State Fire Marshal or local fire prevention officer~~
10 ~~based on building codes in place at the time that the facility was~~
11 ~~initially licensed.~~

12 ~~(c) A licensure fee, established in accordance with Chapter 7.3~~
13 ~~(commencing with Section 11833.01).~~