

November 21, 2011

TO: Joint Legislative Oversight Committee on Justice & Public Safety

FROM: Hal Pell, Committee Co-Counsel

During the Committee's last meeting, there were several legal issues that were discussed. The following information is provided to answer some of the questions asked by committee members, and to clarify the information provided.

What rights, if any, do prisoners have to a chaplain of their faith?

This issue is controlled by the free exercise of religion clause of the First Amendment to the U.S. Constitution, which is applicable to the states by the Fourteenth Amendment. The federal courts have held that the prisoner must show a substantial burden on a sincerely held religious belief. If so, the government then has the burden of showing a compelling interest. Further, a prisoner is not entitled to either a chaplain of his or her faith, or even a special chapel or place of worship in prison. The United States Supreme Court, in addressing this issue, stated:

“We do not suggest ... that every religious sect or group within a prison—however few in number—must have identical facilities or personnel. A special chapel or place of worship need not be provided for every faith regardless of size; nor must a chaplain, priest, or minister be provided without regard to the extent of the demand. But reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty.”

Consequently, the test for adherence to the free exercise clause is whether the prisoner is afforded substantial opportunities to exercise their faith, balanced against a state's compelling interest, e.g., to insure security and welfare in the prison system. The courts also review whether a prisoner's demand for a chaplain of their own faith would negatively impact other inmates, prison personnel, and the allocation of scarce prison resources.

What are the penalties for the possession of a mobile phone by a prisoner or someone attempting to deliver a mobile phone to a prisoner?

The General Assembly passed legislation in 2009 which provides that, except as authorized by DOC policy, no person shall possess a mobile phone on the premises of a State correctional facility. There is an exception for employees or visitors; they may possess one within the confines of a motor vehicle in a designated parking area, as long as the vehicle is locked and the phone remains in the vehicle when they exit it. This provision is not in the State's criminal code and it has no criminal penalties; however, the phone may be confiscated upon a violation of DOC's regulations.

In Chapter 14 of the General Statutes, which includes the State's criminal statutes, there are two provisions:

1. A person who knowingly gives or sells a mobile phone to a prisoner, or delivers it to someone else for delivery to a prisoner, is guilty of a Class 1 misdemeanor. This

provision applies to whether the prisoner is in DOC custody or in a local confinement facility.

2. A prisoner in a local confinement facility, who possesses a mobile phone, is guilty of a Class 1 misdemeanor. Significantly, this criminal provision does not apply to prisoners in a State correctional facility. The General Assembly may have concluded that (1) the DA where a State correctional facility is located may not have the prosecution of a State prisoner from another county on such an offense as a priority, and (2) that it made more sense to sanction only local prisoners who, unlike State prisoners, are not subject to the myriad of sanctions which are more severe for a State prisoner than a conviction of a Class 1 misdemeanor (loss of credit towards a minimum sentence, reclassification, and loss of privileges.)

Please contact me or Brenda Carter if you have any questions, or need any additional information. Hal

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