



Luther S. Olsen

State Senator

14th District

TO: Senate Committee on Judiciary and Public Safety
FROM: Senator Luther Olsen
DATE: March 9, 2020
SUBJECT: Testimony in favor of Assembly Bill 690 & Senate Bill 647

Thank you Chairman Wanggaard and the Senate Committee on Judiciary and Public Safety for holding a hearing and allowing me to testify in favor of Assembly Bill 690 and Senate Bill 647.

Last year, Representative Plumer and I made a visit to the Fox Lake Correctional Institution where we were able to tour the facility and talk to staff. During those conversations, it came to our attention that the prison is experiencing an issue with inmates requesting and receiving items, or contraband, from people outside the institution. We discovered there is a loophole in current law that needs to be addressed in order to stop this problem.

Under current law, it is a Class I felony to provide an inmate with contraband, however it is not against the law for an inmate to receive that contraband. In many cases, once the person who has been smuggling in contraband to the inmate is caught, the inmate simply moves on to the next supplier. There is no deterrent so inmates are able to repeat this cycle over and over with no consequences.

Under the original bill, an inmate who is caught receiving contraband from people outside the institution can be charged with a misdemeanor, punishable with up to an additional nine months in prison and a fine of up to \$10,000. However, after continued conversations with the warden at Fox Lake, we decided to amend the bill to change the punishment from a misdemeanor to a Class H Felony.

It is important to have strong enough punishment to accomplish the goal of preventing contraband and protecting the inmates and the men and women who work at our state's jails and prisons. The possibility of facing additional time in prison could cause an inmate to stop requesting and receiving items from people outside the institution.

Thank you, members. I ask for your support and would be more than happy to answer any questions.



JON PLUMER

STATE REPRESENTATIVE • 42nd ASSEMBLY DISTRICT

Testimony on **AB 690** – Smuggling items into or out of prisons by inmates

Senate Committee on Judiciary and Public Safety
Tuesday, March 10, 2020

During a visit to the Fox Lake Correctional Institution in the Northeastern part of my district, it came to our attention that the prison is experiencing an issue with inmates requesting and receiving items, or contraband, from people outside the institution.

During the visit, the prison's warden informed me that typically male inmates will find women outside the facility, develop a sort of relationship with them, then request them to bring them items, referred to as contraband. **Under current law, it is a Class I felony to provide an inmate with contraband, however it is not against the law to receive said contraband.** In many cases, once the person who has been smuggling in contraband to the inmate is caught, the inmate simply moves on to the next. They are able to repeat this cycle over and over until they are released because there is no deterrent.

Under this bill, the inmate who is receiving contraband from people outside the institution are faced with a misdemeanor, up to a \$10,000 fine and up to an additional nine months in prison. The thought of facing additional time in prison could cause an inmate to think twice about requesting and receiving items from people outside the institution. This bill is also about safety – for other inmates and for the men and women who work at our state's jails and prisons. When inmates are in possession of items that are not known to jail or prison employees, they are put at risk.

After another conversation with the warden at Fox Lake, he brought up a concern with the bill as written. He was concerned that a misdemeanor was not enough of a deterrent for an inmate to not seek out and accept contraband. Therefore, I took his advice and will be offering an amendment which will change the misdemeanor to a Class H felony. While I am cautious about adding more felonies, the last thing I would want to do is pass a bill that doesn't accomplish its goal or do anything to help our state's institution employees.

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: REPRESENTATIVE JON PLUMER

FROM: Katie Bender-Olson, Senior Staff Attorney

RE: Comparison of Assembly Bills 63 and 690, Relating to Contraband in Jail and Prison

DATE: January 14, 2020

This memorandum responds to your request for a comparison between 2019 Assembly Bill 63 and 690, which both relate to prohibited articles in jails and prisons (commonly referred to as “contraband”). The memorandum also discusses how behavior could be punished differently under Assembly Bills 63 and 690.

CURRENT LAW

State law criminalizes certain behavior relating to possession or delivery of prohibited items in jails and prisons. Section 302.095, Stats., *Delivering Articles to Inmates*, generally makes it a Class I felony to deliver, procure to be delivered, have in your possession with intent to deliver, conceal in the vicinity of a prison or jail, or conceal in a vehicle entering a prison or jail “any article or thing whatever” that is prohibited by the prison rules without permission of the sheriff or warden. The statutory provision remains relatively unchanged since its original enactment in 1856, resulting in statutory language that is archaic and difficult to follow.¹

The statute, as restated for clarity, prohibits any person from doing any of the following, if it is contrary to institution rules and without permission:

- **Delivering Contraband.** Delivering a prohibited article to an inmate with intent that an inmate obtain or receive it.
- **Procuring Contraband for Delivery.** Procuring a prohibited article to be delivered with intent that an inmate obtain or receive it.

¹ Section 302.095 (2), Stats, reads as follows:

Any officer or other person who delivers or procures to be delivered or has in his or her possession with intent to deliver to any inmate confined in a jail or state prison, or who deposits or conceals in or about a jail or prison, or the precincts of a jail or prison, or in any vehicle going into the premises belonging to a jail or prison, any article or thing whatever, with intent that any inmate confined in the jail or prison shall obtain or receive the same, or who receives from any inmate any article or thing whatever with intent to convey the same out of a jail or prison, contrary to the rules or regulations and without the knowledge or permission of the sheriff or other keeper of the jail, in the case of a jail, or of the warden or superintendent of the prison, in the case of a prison, is guilty of a Class I felony.

- **Possessing Contraband for Delivery.** Having in one's possession a prohibited article with intent to deliver the article to an inmate, with intent that the inmate obtain or receive it.
- **Hiding Contraband on the Grounds for an Inmate.** Depositing or concealing a prohibited article in or around a jail or prison with intent that an inmate obtain or receive it.
- **Hiding Contraband in a Vehicle for an Inmate.** Depositing or concealing a prohibited article in a vehicle going into the premises belonging to a jail or prison with intent that an inmate obtain or receive it.
- **Receiving Contraband to Smuggle Out.** Receiving a prohibited article from an inmate with intent to convey it out of the jail or prison.

Specifically, these behaviors are prohibited if they are contrary to the rules or regulations of the jail or prison, and if they are without the knowledge or permission of the sheriff or keeper of the jail, or the warden or superintendent of the prison. [s. 302.095 (2), Stats.]

ASSEMBLY BILL 63

Assembly Bill 63 adds another behavior to those prohibited under current law. In addition to the bullet-points under the previous section, Assembly Bill 63 also prohibits any person from doing the following:

- **Possessing Contraband to Keep.** Having a prohibited article in his or her possession, with intent to retain it for himself or herself.

This behavior is prohibited if it is done without the knowledge or permission of the sheriff or keeper of the jail, or the warden or superintendent of the prison.

ASSEMBLY BILL 690

Assembly Bill 690 criminalizes additional behavior relating to prohibited articles in jails and prisons, but the new crime under the bill applies only to inmates and is punished as a misdemeanor. Assembly Bill 690 prohibits an inmate from doing any of the following, if it is contrary to institution rules and without permission:

- **Inmate Receiving Contraband.** Receiving or obtaining a prohibited article conveyed from a person.
- **Inmate Having Contraband Delivered.** Having delivered to the inmate a prohibited article conveyed from a person.
- **Inmate Possessing Contraband.** Being in possession of a prohibited article conveyed from a person.
- **Inmate Hiding Contraband Around the Facility.** Depositing or concealing a prohibited article conveyed from a person in or about a jail or prison.
- **Inmate Giving Contraband to Smuggle Out.** Providing a prohibited article to a person with the intent to convey it out of the jail or prison.
- **Inmate Procuring Contraband to Smuggle Out.** Procuring a prohibited article to be provided to a person with the intent to convey it out of the jail or prison.

These behaviors are prohibited if they are contrary to the rules or regulations of the jail or prison and are done without the knowledge or permission of the sheriff or keeper of the jail, or the warden or superintendent of the prison. A violation is an unclassified misdemeanor, punishable by imprisonment of nine months or less, a fine of \$10,000 or less, or both.

COMPARISON BETWEEN ASSEMBLY BILLS 63 AND 690

Assembly Bills 63 and 690 both amend s. 302.095, Stats., to criminalize additional behaviors relating to contraband. However, Assembly Bills 63 and 690 differ with respect to whom the new crime applies, whether a violation is punished as a misdemeanor or felony, and whether the new crime covers behaviors related to attempts to smuggle items out of a jail or prison.

Application of New Crime – Any Person vs. Inmates Only

The new criminal act under Assembly Bill 63 can be committed by anyone, while the new criminal acts under Assembly Bill 690 can be committed only by inmates. Assembly Bill 63 prohibits “any person” from having a prohibited item in his or her possession with the intent to retain that article for himself or herself, if it is contrary to the rules or regulations of the jail or prison and is done without knowledge or permission of the sheriff or keeper of the jail, or the warden or superintendent of the prison. This means that a correctional officer or visitor could potentially violate the new provision of Assembly Bill 63 criminalizing possession of a prohibited article contrary to jail or prison rules.

In contrast, Assembly Bill 690 prohibits any “inmate” from receiving, obtaining, having delivered, being in possession of, or depositing or concealing around the institution a prohibited article conveyed from a person, as well as providing or procuring to be provided to a person a prohibited article with intent to convey it out of the institution. Thus, only an inmate could violate the new criminal provisions of Assembly Bill 690.

Punishment Level – Felony vs. Misdemeanor

The new criminal act under Assembly Bill 63 is punished as a Class I felony, while the new criminal acts under Assembly Bill 690 are punished as unclassified misdemeanors. Assembly Bill 63 punishes the possession of a prohibited article with intent to keep it for oneself in the same way that it punishes other contraband-related behaviors. For example, under Assembly Bill 63, the following are all punished as Class I felonies: (1) delivering a prohibited article to an inmate; (2) having a prohibited article in one’s possession with intent to deliver it to an inmate; and (3) possessing a prohibited article with intent to retain it for yourself.

In contrast, Assembly Bill 690 punishes the following as misdemeanors: (1) possessing, receiving, or concealing a prohibited article conveyed from another person; and (2) providing or procuring to provide a prohibited article to another person in order to convey the article out of the jail or prison. Under Assembly Bill 690, an inmate who **delivers** a prohibited article to another inmate would be subject to a Class I **felony** (which is current law), but the inmate who **receives** the prohibited article would be subject to a **misdemeanor**.

Prohibited Behaviors

Assembly Bill 63 and Assembly Bill 690 criminalize slightly different behaviors related to an inmate’s possession of a prohibited article, and Assembly Bill 690 criminalizes additional inmate behaviors that Assembly Bill 63 does not. Assembly Bill 63 prohibits only possessing a prohibited article with intent to retain the article for oneself. Assembly Bill 690 criminalizes possessing, receiving, obtaining, or having

delivered a prohibited article conveyed by another person, as well as depositing or concealing a prohibited article in or around a jail or prison.

In addition, Assembly Bill 690 criminalizes an inmate's attempt to smuggle prohibited articles **out** of a jail or prison. Under current law, it is a Class I felony to receive a prohibited article from an inmate with intent to convey it out of a jail or prison. Current law does not, however, criminalize the act of giving a prohibited article to someone else in order to smuggle it out. Assembly Bill 690 makes it a misdemeanor for an inmate to provide a prohibited article to another person, or to procure a prohibited article to be provided to another person, with the intent to convey it out of the jail or prison.

Finally, even though Assembly Bill 63 and Assembly Bill 690 both criminalize an inmate's possession of a prohibited article, they require a prosecutor to establish different elements to obtain a conviction. Under Assembly Bill 63, an inmate may be convicted of a felony if the prosecutor establishes that the inmate: (1) had a prohibited article in his or her possession; and (2) the inmate had intent to keep it for himself or herself. Under Assembly Bill 690, an inmate may be convicted of a misdemeanor if the prosecutor establishes that the inmate: (1) was in possession of a prohibited article; and (2) the prohibited article was conveyed from another person.

DISCUSSION OF DIFFERENT TREATMENT OF SIMILAR BEHAVIOR

Similar behavior may be punished differently under Assembly Bill 63 than under Assembly Bill 690. Current law already punishes possession of a prohibited article with intent to deliver it to an inmate as a felony. Assembly Bills 63 and 690 both extend current law to also punish possession of a prohibited article without intent to deliver it to another inmate.

Possession of a prohibited article by a **noninmate** (e.g., correctional officer or visitor) would be punishable as a felony under Assembly Bill 63, but would not be punishable at all under Assembly Bill 690.

Possession of a prohibited article by an **inmate** would be punishable as a felony under Assembly Bill 63, and would be punishable as a misdemeanor under Assembly Bill 690, but only if the prohibited article was conveyed from another person. Possession of a prohibited article by an inmate that was not conveyed from another person would not be punishable at all under Assembly Bill 690.

If both Assembly Bills 63 and 690 were enacted, an inmate could potentially be charged with both a felony and a misdemeanor for certain behavior. If the inmate possessed a prohibited article that was conveyed from another person and that the inmate intended to keep, he or she would potentially have violated both the Assembly Bill 63 prohibition against "any person" possessing a prohibited article with intent to retain it for himself or herself, and the Assembly Bill 690 prohibition against "an inmate" possessing a prohibited article that was conveyed from another person. Since the elements of the two violations are not identical, different facts must be established for each violation and one offense would not be a lesser included offense of the other. [See s. 939.66 (1), Stats.] This means an inmate could potentially be charged with both. A prosecutor would have discretion to decide whether to charge an inmate with a felony only, a misdemeanor only, or both.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

KBO:ty