Michael J. O'Neill *Legislative Service Commission*

Sub. S.B. 12

123rd General Assembly
(As Passed by the Senate)

Sens. Mumper, Armbruster, Carnes, Wachtmann, Johnson, Latta, Gardner, Drake, Watts, Nein, Oelslager, Spada, Prentiss, DiDonato

BILL SUMMARY

- Prohibits the provision of internet access to prisoners in state, county, municipal, and privately operated correctional facilities unless the access is for authorized educational purposes.

- Prohibits a prisoner in a state, county, or municipal correctional facility or in a privately operated correctional facility from accessing the internet.

- Requires the Director of Rehabilitation and Correction to adopt rules governing the establishment and operation of a system for providing internet access to prisoners in an approved educational program.

CONTENT AND OPERATION

Prohibiting the provision of internet access

The bill enacts prohibitions that generally prohibit the provision of internet access to prisoners in various correctional facilities and the use by prisoners of such access. Specifically, the bill prohibits an officer or employee of a "contractor" who is operating and managing a private correctional facility from providing or permitting prisoner access to the "internet" through the use of a "computer," "computer network," "computer system," "computer services," "telecommunications service," or "information service" unless both of the following apply (R.C. 9.08(B)):

(1) The prisoner is participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes.

(2) The provision of and access to the internet is in accordance with rules adopted by the Department of Rehabilitation and Correction (DRC) under the bill.

(See "***Definitions***," below for definitions of terms in quotes.)

Similarly, the bill prohibits "county correctional officers" (R.C. 341.42(B)), "municipal correctional officers" (R.C. 753.32(B)), and officers and employees of correctional institutions under the control or supervision of DRC (R.C. 5145.31(B)) from providing or permitting prisoner access to the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service unless both of the conditions set forth in (1) and (2), above, apply. (See **COMMENT** 1.)

Penalty for providing internet access

The reckless provision of internet access by any of the above named persons would be a violation of the prohibition against dereliction of duty, a misdemeanor of the second degree. (R.C. 2921.44.) (See **COMMENT** 2.)

DRC rules for internet access

The bill requires the Director of DRC to adopt rules under the Administrative Procedure Act to govern the establishment and operation of a system that provides access to the internet for prisoners who are participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes. The rules must include all of the following (R.C. 5120.62):

(1) Criteria by which inmates may be screened and approved for access or training involving the internet;

(2) Designation of the authority to approve internet sites for authorized use;

(3) A requirement that only pre-approved sites will be accessible on the computers used by prisoners in the educational program;

(4) A process for the periodic review of the operation of the system, including users of the system and the sites accessed by the system;

(5) Sanctions that must be imposed against prisoners and staff members who violate department rules governing prisoner assess to the internet.

Prohibition against prisoner accessing the internet

The bill prohibits any prisoner in a private correctional facility from accessing the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service.

Any prisoner who violates the prohibition is guilty of "improper internet access," a misdemeanor of the first degree. (R.C. 9.08(C).)

Similarly, the bill prohibits any prisoner in a county correctional facility (R.C. 341.42(C)), a municipal correctional facility (R.C. 753.32(C)), or a correctional institution under the control and supervision of DRC (R.C. 5145.31(C)) from accessing the internet through the use of a computer, computer network, computer system, computer services, telecommunications service, or information service. Any prisoner who violates any of these prohibitions is guilty of "improper internet access," a misdemeanor of the first degree. (See **COMMENT** 1.)

Definitions

The bill provides that, as used in the above described prohibitions, these terms have the following meanings:

"Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(M)).

"Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(N)).

"Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(O)).

"Computer services" includes, but is not limited to, the use of a computer system, computer network, computer program, data that is prepared for computer use, or data that is contained within a computer system or computer network (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(L)).

"Telecommunications service" means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(Z)).

"Information service" means, subject to the following sentence, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including, but not limited to, electronic publishing. It does not include any use of a capability of a type described in the prior sentence for the management, control, or operation of a telecommunications system or the management of a telecommunications service (R.C. 9.08(A)(1), 341.42(A)(2), 753.32(A)(2), and 5145.31(A)(1) by reference to R.C. 2913.01(BB)).

"Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web (R.C. 341.42(A)(3) and R.C. 9.08(A)(4), 753.32(A)(3), and 5145.31(A)(2) (by reference to R.C. 341.42(A)(3))).

"County correctional officer" means a person who is employed by a county as an employee or officer of a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 341.42(A)(1) by reference to R.C. 341.41--not in the bill).

"Municipal correctional officer" means a person who is employed by a municipal corporation as an employee or officer of a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 753.32(A)(1) by reference to R.C. 753.31--not in the bill).

"Contractor" means a person who enters into a contract under R.C. 9.06 for the private operation of a local or state correctional facility for Ohio prisoners or a person who enters into a contract under R.C. 9.07 to operate and manage a correctional facility in Ohio for out-of-state prisoners (R.C. 9.08(A)(2)).

"Private correctional facility" means a correctional facility operated by a contractor under a contract pursuant to R.C. 9.06 or 9.07 (R.C. 9.08(A)(3)).

"County correctional facility" means a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county

jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 341.42(A)(4)).

"Municipal correctional facility" means a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 753.32(A)(4)).

COMMENT

1. Although the bill does not prohibit correctional officers and employees from providing internet access to a prisoner if the prisoner is participating in an approved educational program with direct supervision in accordance with DRC rules, it prohibits prisoners in all situations from accessing the internet.

2. R.C. 2921.44(E) provides in part that no public servant shall recklessly do any act expressly forbidden by law with respect to his office. A person who violates the prohibition in the bill is guilty of dereliction of duty, a misdemeanor of the second degree. Under existing law, county correctional officers, municipal correctional officers, and officers or employees of correctional institutions under the control or supervision of the Department of Rehabilitation and Correction are all public servants. (See R.C. 2921.01--not in the bill.) The bill expands, for the purpose of the dereliction of duty prohibition, the definition of public servants to include officers or employees of contractors who are operating and managing private correctional facilities.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-20-99	p.	27
Reported, S. Judiciary	06-30-99	p.	851
Passed Senate (33-0)	06-30-99	pp.	854-855

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