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Andrew W. Eichner

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**A CROSS-JURISDICTIONAL ANALYSIS OF PENALTIES FOR
POSSESSION OF CONTRABAND PHONES BY INMATES AND A
PROPOSAL TO INCREASE THE FEDERAL PENALTY**

*Andrew W. Eichner**

ABSTRACT

The federal penalty for possession of a contraband phone by an inmate is currently a statutory maximum of one year of imprisonment, which is a Class A misdemeanor. This Article surveys 56 jurisdictions from across the United States (the 50 States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands) and discovers that the federal penalty for this offense is much lower than the national average for comparable offenses, which is an average statutory maximum of five years of imprisonment. To rectify this discrepancy, the Article proposes increasing the federal statutory maximum for the offense from one year to five years, based on supporting data from the surveyed jurisdictions and policy arguments based on recidivism studies.

* J.D., The University of Texas School of Law, 2012. B.A., Boston University, 2009. The opinions expressed in this Article in no way reflect the views of the Tennessee Air National Guard, the United States Air Force, the Department of Defense, the United States Attorney's Office for the Southern District of Mississippi, the United States Department of Justice, or any agency of the United States Government. All opinions are entirely the author's own. Additionally, all sources referenced in this Article are publicly available and are unclassified. The author would like to thank his wife, family, friends, colleagues, and all of the people who helped him in the editing process for their advice and support. He would also like to thank Josh Robles, who inspired the author to research the issues examined in this Article.

I. INTRODUCTION

Jared Johns was only seven-years-old when he knew he wanted to become a soldier.¹ On September 11, 2001, Johns watched as the World Trade Center's twin towers collapsed, the Pentagon erupted in flames, and a plane full of innocent Americans crashed into a field in Pennsylvania.² Johns knew in that crystalized moment that he would grow up to join the United States military.³ "That day, Jared turned to his family and announced that he was going to join the Army when he grew up, just like his grandpa and his uncles."⁴

When Johns was still in high school, "a friend joined the Army and was sent to Afghanistan. Just 19 days into his deployment, the friend was killed by a roadside bomb."⁵ Despite his mother's pleas to stay, Johns was undeterred from his dream and left for basic training with the Army just two months after graduating from his South Carolina high school.⁶ Less than a year after joining, Johns "was deployed to Afghanistan's Kandahar Province as a gunner,"⁷ "manning a .50-caliber gun atop a Buffalo, a moving-truck-sized armored vehicle."⁸

While "Jared had wanted to see combat, . . . the reality of it hit him harder than he'd imagined."⁹ Observing the horrors of combat in Afghanistan firsthand, Johns developed depression and post-traumatic stress disorder ("PTSD").¹⁰ Then:

After a patrol in Kandahar Province one day, Jared injured his back while getting off the Buffalo. He was flown to a hospital on a base in Germany. There, the

¹ Kirk Brown, *South Carolina Inmate Pleads Guilty in Blackmail Scheme of Greenville Army Veteran*, GREENVILLE NEWS (May 17, 2021, 3:30 PM), <https://www.greenvilleonline.com/story/news/local/2021/05/17/south-carolina-inmate-pleads-guilty-blackmail-plot-greenville-army-veteran/5097333001>.

² *Id.*

³ *Id.*

⁴ Vince Beiser, *The War Vet, the Dating Site, and the Phone Call From Hell*, WIRED (Dec. 16, 2019, 6:00 AM), <https://www.wired.com/story/the-phone-call-from-hell>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see also Antonia Noori Farzan, *A Veteran's Suicide Was Blamed on Depression. Then Police Found Threatening Texts Sent From Prison*, WASH. POST (May 14, 2019, 6:11 AM), <https://www.washingtonpost.com/nation/2019/05/14/veterans-suicide-was-blamed-depression-then-police-found-threatening-texts-sent-prison>.

⁸ Beiser, *supra* note 4.

⁹ *Id.*

¹⁰ Farzan, *supra* note 7.

doctors put him on painkillers and told him he couldn't go back into combat. After barely six months in the field, he was done as [a] war-fighter.¹¹

Johns struggled with his new reality. He started drinking heavily, impregnated a local woman, was caught driving under the influence, and attempted suicide, ultimately resulting in his placement in psychiatric care.¹² By October 2015, he had received an Under Honorable Conditions (General) discharge from the Army and returned to South Carolina, only worsening his depression.¹³ He found himself on antidepressants, struggling with his diagnosed PTSD.¹⁴

Despite his initial troubles upon returning to the United States, over the following years things seemed to be slowly improving for Johns. He moved in with his twin brother, got a job, and maintained a healthy relationship with his family.¹⁵ His girlfriend became unexpectedly pregnant, but Johns was overjoyed when his second son was born.¹⁶ “He stopped taking the antidepressants; he wanted to keep his head clear to be a good dad to the baby.”¹⁷ Unfortunately, shortly after the birth of their son, tensions rose between Johns and his girlfriend and he soon found himself a “part-time single dad, fighting regularly with his ex.”¹⁸

In mid-2018, Johns was on the popular dating application Tinder, when he met and started exchanging messages with a young woman named Caroline Harris.¹⁹ He “sent her a photograph of himself in a baseball cap[,]” and she replied “with one of herself, lying down in a lacy bra.”²⁰ He explained to the young woman that he had just gotten out of a relationship with his youngest son’s mother and was looking for friendship, and possibly more.²¹ She responded that she was originally from Myrtle Beach, now living in Greenville, and would be eighteen in a few weeks, on September 15, 2018.²² They exchanged

¹¹ Beiser, *supra* note 4.

¹² *Id.*

¹³ *Id.* See also Brown, *supra* note 1.

¹⁴ Beiser, *supra* note 4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

a few more non-sexual, innocuous messages, and then Johns went on with his day.²³

On September 10, 2018, Johns was sitting in his car when he got a call from a number he did not recognize.²⁴ When Johns answered:

The caller identified himself as a police detective. He'd been contacted, he said, by Caroline's parents, who were outraged that Jared had sexually propositioned their underage daughter. They wanted Jared arrested, but the detective suggested he try to work things out with the parents directly. The man on the phone gave him a number to call. Jared was bewildered and shaken. . . . He called the number and got a man who said he was James Harris, Caroline's dad. Caroline's mother, the man said, was furious and wanted to press charges.²⁵

The enraged parents presented Johns with an ultimatum. He "could either pay them \$1,189 or take his chance[s] with the police."²⁶

Despite assurances from others who reviewed the Tinder conversation with Caroline Harris and tried to convince Johns that he had done nothing wrong, Johns could only see a future where he would be kept from his sons as a registered pedophile.²⁷ Johns tried to negotiate with the Harris family one final time, but received an icy response: "I don't see where we have anything to talk about You know I really don't hate it for you because you knew what you was doing She is going to the police and you are going to jail."²⁸

On the morning of September 11, 2018, Johns wrote on the whiteboard in the entryway to his apartment: "I'm sorry. I messed up I love you all. This is not what I wanted. Tell my sons I was a good man."²⁹ He recorded a short video, telling his sons: "I hate that I'm not going to get to see you grow up, but it's better this way, I

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Farzan, *supra* note 7.

promise.”³⁰ He told his parents he loved them.³¹ Johns’ twin brother found his body later that day. Johns “had shot himself within minutes of the final text from James Harris.”³²

Weeks later, Johns’s mother, Kathy Bowling, received a Facebook message from an anonymous tipster under the pseudonym “Angel Amongus,” who claimed to have information about her son’s death.³³ “Angel Amongus revealed that there was no Mr. and Mrs. Harris. But this was no garden-variety con job, Angel explained. The scammers, like the anonymous informant himself, were prisoners in South Carolina’s Lee Correctional Institution.”³⁴ In reality:

The pretty teenage girl Jared thought he was flirting with was . . . two thickset, middle-aged, male inmates working contraband cell phones. Jared, it turns out, was just one of hundreds of US military service members and veterans suckered by a massive wave of catfishing scams launched from South Carolina correctional facilities over the past few years.³⁵

One of the men was “serving a 25-year sentence for his third methamphetamine possession and distribution charge,” while the other was “serving 15 years for assault and aggravated battery.”³⁶ Jared Johns committed suicide because he had become the victim of an elaborate sextortion scam being operated from South Carolina correctional institutions. “Between 2015 and 2018, 442 service members from the Army, Navy, Air Force, and Marine Corps were conned out of more than \$560,000 through the scam, the investigators found.”³⁷

The scheme that killed Jared Johns would not have been possible without the prisoners’ use of contraband phones. “[P]olice and prison officials did not say exactly how the inmates had been able to get their hands on contraband cellphones while incarcerated in the maximum-security facility.”³⁸ The Director of the South Carolina Department of Corrections reported that they had even put up netting to

³⁰ Brown, *supra* note 1.

³¹ Beiser, *supra* note 4.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Farzan, *supra* note 7.

³⁷ *Id.*

³⁸ *Id.*

stop the phones from being thrown into the jail, but that they were still struggling with criminals flying phones into the jail using drones, and with “clergy, correctional officers, . . . medical staff” and others sneaking them in.³⁹

The problems caused by the influx of contraband phones into the corrections system extends well beyond the South Carolina Department of Corrections. In a 2019 report, the Department of Justice’s Office of the Inspector General (“DOJ OIG”) noted that the Federal Bureau of Prisons (“BOP”) “continues to face challenges preventing contraband, including cell phones, . . . from being introduced into BOP facilities.”⁴⁰ Succinctly, “[a]n inmate with a cell phone can carry out criminal activities, including threatening and intimidating witnesses, victims, and BOP staff, and coordinating escape attempts.”⁴¹ The DOJ OIG was “particularly concerned about the challenges to safety and security posed by contraband cell phones,” with its investigations showing “that contraband cell phones in prisons are dangerous weapons.”⁴² The report even included one example where a BOP inmate used a contraband phone in connection with his role in arranging the murder of a correctional officer.⁴³ Efforts to curtail contraband phones in federal prisons are complicated by external and internal threats, including individuals using “drones to drop caches of cell phones and drugs at specifically targeted locations within BOP facilities” and “BOP employees . . . smuggl[ing] contraband into its facilities, further

³⁹ *Id.*

⁴⁰ U.S. DEP’T OF JUST. OFF. OF THE INSPECTOR GEN., TOP MANAGEMENT AND PERFORMANCE CHALLENGES FACING THE DEPARTMENT OF JUSTICE 1 (2019) [hereinafter “2019 DOJ OIG REPORT”], <https://oig.justice.gov/sites/default/files/reports/2019.pdf>; see also M.N. Parsons et al., *Detecting and Managing Cell Phone Contraband: An Overview of Technologies for Managing Contraband Cell Phone Presence and Use in Correctional Facilities*, OFF. JUST. PROGRAMS 2 (Sept. 2021), <https://www.ojp.gov/pdffiles1/nij/grants/302129.pdf> (“Cell phone use by inmates is a significant concern because they can be used to contact accomplices both inside and outside the facility for nefarious purposes, including to . . . [o]rchestrate escape attempts.”); DEP’T OF JUST. OFF. OF THE INSPECTOR GEN., REVIEW OF THE FEDERAL BUREAU OF PRISONS’ CONTRABAND INTERDICTION EFFORTS i (2016) [hereinafter “2016 DOJ OIG REPORT”], <https://oig.justice.gov/sites/default/files/reports/e1605.pdf> (“An inmate with a cell phone, particularly a smartphone, can carry out criminal activities undetected, including threatening and intimidating witnesses, victims, and public officials, and coordinate escape attempts.”).

⁴¹ 2019 DOJ OIG REPORT, *supra* note 40, at 1.

⁴² *Id.*

⁴³ *Id.* at 1-2.

endanger[ing] staff and inmates.”⁴⁴ Yet, despite this danger to staff, inmates, and the population at large, federal law only penalizes the possession of contraband phones with a maximum possible term of imprisonment of one year—a misdemeanor.⁴⁵

One of the purposes of criminal law is to “provide[] a punishment for the criminal conduct, geared primarily to the gravity of the offense, yet broad enough in latitude to accommodate the characteristics of individual offenders.”⁴⁶ To that end, “[p]unishment seeks ultimately to protect the community by preventing crime, to end impunity for violations of the penal law, or to simply give offenders their ‘just deserts,’” centered around the principles of “retribution, deterrence, rehabilitation, and incapacitation.”⁴⁷ To the extent that the government has determined that the deprivation of an individual’s liberty is justified as a response to their behavior, the imperfect art of calculating an appropriate term of imprisonment is based, at least in part, around these principles.

As demonstrated by the tragedy of what happened to Jared Johns and further highlighted by the 2019 DOJ OIG report, the magnitude of harm that can be caused by contraband phones in prisons cannot be overstated. Moreover, the problem of contraband phones has only gotten worse over time, with the number of seized contraband phones growing at an alarming and exponential rate.⁴⁸ The law must provide a sufficient punishment to mitigate the threat posed. Unfortunately, the current federal penalty for illicit possession of these devices falls far short, curtailing the ability of sentencing judges to adjudicate punishments that achieve the previously mentioned principles of criminal law.

⁴⁴ *Id.* at 2.

⁴⁵ See 18 U.S.C. §§ 1791(a)(2), (b)(4), (d)(1)(F).

⁴⁶ JENS DAVID OHLIN, 1 WHARTON’S CRIMINAL LAW § 1:1 1 (16th ed. 2022).

⁴⁷ *Id.* (citations omitted); see also U.S. SENTENCING GUIDELINES MANUAL, ch. 1, pt. A, introductory. cmt., at 1-2 (U.S. SENT’G COMM’N 2021) (“The Sentencing Reform Act of 1984 . . . provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation.”).

⁴⁸ See, e.g., TAMMY IRWIN ET AL., CAL. DEP’T CORR. & REHAB., BUDGET CHANGE PROPOSAL FOR FISCAL YEAR 2020-2021: CELLULAR INTERDICTION PROGRAM (2020), https://esd.dof.ca.gov/Documents/bcp/2122/FY2122_ORG5225_BCP4094.pdf (“In 2009, California’s Office of the Inspector General (OIG) published a special report The report identified a ten-fold increase in cell phones seizures between 2006 and 2008, with 2,811 phones confiscated in 2008. In 2019, a total of 13,450 phones were confiscated.”).

This Article is composed of two primary parts. Part II surveys the current status of statutes criminalizing the possession of contraband phones by inmates, examining the United States Code, the laws of each of the fifty States, the District of Columbia, and five (5) additional United States territories. By examining this data, the reader may survey the different mechanisms and strategies used in jurisdictions across the nation to deter the criminal possession of contraband phones in correctional institutions. It then analyzes the data and identifies trends among the different ways that jurisdictions punish the possession of contraband phones by inmates. The data collected shows that penalties under the United States Code for possession of contraband phones by inmates are misaligned with punishments for comparable crimes in the majority of jurisdictions across the country. Part III considers what lessons can be learned from the data compiled in Part II and recommends increasing the federal penalty to a five-year statutory maximum in order to better respond to the threat of contraband phones moving forward.

II. SURVEY OF STATUTES CRIMINALIZING POSSESSION OF CONTRABAND PHONES BY INMATES

This Part provides the current status of penalties in jurisdictions throughout the United States for possession of contraband phones by inmates. Section A describes the status of these penalties under the United States Code. Section B provides the status of these penalties in each of the fifty States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the three territories of American Samoa, Guam, and the United States Virgin Islands. Section C then analyzes jurisdictional trends in the dataset.

A. Penalty for Possession of Contraband Phones by Inmates in the United States Code

Federal law prohibits the possession of contraband in any “federal correctional, detention, and penal facility or any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General.”⁴⁹ Pursuant to Title 18, United States Code, Section 1791(a)(2), whoever “being an inmate of a prison, makes, possesses, or obtains, or attempts to

⁴⁹ 18 U.S.C. §§ 1791(a)(2), (d)(4).

make or obtain, a prohibited object” shall be punished in accordance with the type of prohibited contraband possessed.⁵⁰ Where the prohibited object possessed by an inmate is “a phone or other device used by a user of commercial mobile service . . . in connection with such service,”⁵¹ the penalty is “imprisonment for not more than one year, [a fine under Title 18, United States Code, Section 3571,] or both.”⁵² Therefore, possession of a contraband phone by a federal inmate is only a Class A misdemeanor.⁵³

As additional deterrence to inmate-offenders, “[a]ny punishment imposed under [Title 18, United States Code, Section 1791(b)] for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation.”⁵⁴

B. Penalties for Possession of Contraband Phones by Inmates in the Fifty States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the United States Virgin Islands

In evaluating the penalties for possession of contraband phones by inmates in the fifty States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the territories of American Samoa, Guam, and the United States Virgin Islands, two primary questions are addressed. First, what is the maximum term of imprisonment, if any, that may be adjudicated against an inmate-offender for possession of a contraband phone?⁵⁵ Second, like the United States Code, does the law require the sentencing judge in each jurisdiction to impose a term of imprisonment for

⁵⁰ 18 U.S.C. § 1791(a)(2).

⁵¹ 18 U.S.C. § 1791(d)(1)(F).

⁵² 18 U.S.C. § 1791(b)(4).

⁵³ See 18 U.S.C. § 3559(a) (defining different categories of felonies and misdemeanors); see also 18 U.S.C. § 3156(a)(3) (stating that as used in 18 U.S.C. §§ 3141–50, “the term ‘felony’ means an offense punishable by a maximum term of imprisonment of more than one year”).

⁵⁴ 18 U.S.C. § 1791(c).

⁵⁵ Depending on the jurisdiction, contraband phones are called different things, including but not limited to cell phones, telecommunication devices, and cellular telephones. In the table below, the language of the jurisdiction is used where available. In all instances, these terms are interchangeably referring to contraband phones.

possessing a contraband phone to run consecutively to the inmate-offender's current term of imprisonment? The information below is organized to answer these two questions. Supplemental information, such as mandatory minimum penalties, is included where relevant and helpful. Additionally, where a statute punishes the crime of possession of an instrumentality of escape by an inmate, that offense is regarded as being sufficiently similar to possession of a contraband phone by an inmate and the statutory maximum for that punishment is included.

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Alabama	Not less than one year and one day nor more than ten years. ⁵⁶	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ⁵⁷

⁵⁶ ALA. CODE § 14-11-50(a) (LexisNexis 2022) (“Except as otherwise authorized by law, or when authorized by the person in charge of the prison or other institution subject to this section, or by an officer of the institution empowered to give that authorization, it shall be unlawful for an inmate to possess a cellular telephone, wireless communication device, or computer that allows the input, output, examination, or transfer of computer programs from one computer to another person or for any person to possess with the intent to deliver, or delivers, to an inmate in the custody of the Alabama Department of Corrections a cellular telephone, wireless communication device, or a computer that allows the input, output, examination, or transfer of computer programs from one computer to another person.”); ALA. CODE § 14-11-50(d) (LexisNexis 2022) (“A violation of subsection (a), (b), or (c) shall be a Class C felony.”); ALA. CODE § 13A-5-6(a)(3) (LexisNexis 2022) (“For a Class C felony, not more than 10 years or less than 1 year and 1 day and must be in accordance with subsection (b) of Section 15-18-8 unless sentencing is pursuant to Section 13A-5-9 or the offense is a sex offense pursuant to Section 15-20A-5.”).

⁵⁷ ALA. R. CRIM. P. 26.12(a) (“Separate sentences of imprisonment imposed on a defendant for two or more offenses shall run consecutively, unless the judge at the time of sentencing directs otherwise, whether they are charged in the same charging instrument or by separate charging instruments.”).

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Alaska	Not more than one year. ⁵⁸	Mandatory. ⁵⁹
American Samoa	<p>American Samoa does not have a criminal statute for possession of contraband phones by inmates.</p> <p>American Samoa does, however, punish “introduc[tion] into any place of confinement a deadly weapon or dangerous instrument, or other thing adapted or designed for use in making an escape, with the purpose of facilitating the escape of any confined prisoner, or of facilitating the commission of any other crime”⁶⁰</p> <p>The term “thing adapted or designed for use in making an escape” is not defined to explicitly include contraband phones, but a</p>	Not applicable.

⁵⁸ ALASKA STAT. § 11.56.380(a)(2) (2022) (“A person commits the crime of promoting contraband in the second degree if the person . . . (2) makes, obtains, possesses, or attempts to make, obtain, or possess anything that person knows to be contraband while under official detention within a correctional facility.”); ALASKA STAT. § 11.56.380(b) (2022) (“Promoting contraband in the second degree is a class A misdemeanor.”); ALASKA STAT. § 11.56.390 (2022) (“In [ALASKA STAT. § 11.56.300–11.56.390], ‘contraband’ means any article or thing which persons confined in a correctional facility are prohibited by law from obtaining, making, or possessing in that correctional facility.”); ALASKA STAT. § 12.55.135(a) (2022) (“A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.”).

⁵⁹ ALASKA STAT. § 12.55.127(a) (2022) (“If a defendant is required to serve a term of imprisonment under a separate judgment, a term of imprisonment imposed in a later judgment, amended judgment, or probation revocation shall be consecutive.”).

⁶⁰ AM. SAMOA CODE ANN. § 46.4629(a)(1) (2021) (“A person commits the crime of aiding escape of a prisoner if he: . . . introduces into any place of confinement a deadly weapon or dangerous instrument, or other thing adapted or designed for use in making an escape, with the purpose of facilitating the escape of any confined prisoner, or of facilitating the commission of any other crime.”); AM. SAMOA CODE ANN. § 46.4629(b) (2021) (“Aiding escape of a prisoner being held in custody or confinement on the basis of a felony charge or conviction is a class D felony; otherwise aiding escape of a prisoner is a class A misdemeanor.”).

	contraband phone could reasonably fall within this definition.	
Arizona	Not less than 0.75 years nor more than two years for first time felony offenders, unless mitigating factors present as defined in Ariz. Rev. Stat. § 13-701. ⁶¹	Mandatory. ⁶²
Arkansas	Possession of cellular telephone by inmate (Class B felony): not less than five years nor more than twenty years. ⁶³ Inmate use of cellular telephone to commit, or attempt, conspire, or	Discretionary to judge, but the term of imprisonment for the new offense will run concurrently

⁶¹ ARIZ. REV. STAT. § 13-2505(A)(3) (LexisNexis 2022) (“A person, not otherwise authorized by law, commits promoting prison contraband: . . . 3. By knowingly making, obtaining or possessing contraband while being confined in a correctional facility or while being lawfully transported or moved incident to correctional facility confinement.”); ARIZ. REV. STAT. § 13-2505(G) (LexisNexis 2022) (“Promoting prison contraband if the contraband is a deadly weapon, dangerous instrument or explosive is a class 2 felony. Promoting prison contraband if the contraband is a dangerous drug, narcotic drug or marijuana is a class 2 felony. In all other cases promoting prison contraband is a class 5 felony.”); ARIZ. REV. STAT. § 13-2501(1) (LexisNexis 2022) (providing that “contraband” includes any “wireless communication device”); ARIZ. REV. STAT. § 13-702(D) (LexisNexis 2022) (displaying first time felony offender penalties, as determined by sentencing grid).

⁶² ARIZ. REV. STAT. § 13-711(A) (LexisNexis 2022) (“Except as otherwise provided by law, if multiple sentences of imprisonment are imposed on a person at the same time, the sentences imposed by the court may run consecutively or concurrently, as determined by the court. The court shall state on the record the reason for its determination.”). *But see* ARIZ. REV. STAT. § 13-711(B) (LexisNexis 2022) (“Notwithstanding subsection A of this section, if a person is subject to an undischarged term of imprisonment and is sentenced to an additional term of imprisonment for a felony offense that is committed while the person is under the jurisdiction of the state department of corrections, the sentence imposed by the court shall run consecutively to the undischarged term of imprisonment.”).

⁶³ ARK. CODE ANN. § 5-54-119(c)(1)(A)-(B) (2022) (“A person commits possessing a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly possesses a: (A) Cellular telephone or other communication device; [or] (B) Component of a cellular telephone or other communication device.”); ARK. CODE ANN. § 5-54-119(c)(2) (2022) (“Possessing a prohibited article is a Class B felony.”); ARK. CODE ANN. § 5-4-401(a)(3) (2022) (“For a Class B felony, the sentence shall be not less than five (5) years nor more than twenty (20) years.”).

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	solicit to commit, an escape, or engaging in continuing criminal enterprise, or a violent felony (Class A felony): not less than six years nor more than thirty years. ⁶⁴	unless explicitly directed otherwise at sentencing. ⁶⁵
California	California does not adjudicate a new criminal penalty for possession of a wireless communication device by an inmate, but it does have a statutory provision providing for time credit denial or loss of up to ninety days on the inmate's original sentence for an offense. ⁶⁶	Not applicable, as the penalty affects time on original sentence.

⁶⁴ ARK. CODE ANN. § 5-54-119(d)(1) (2022) (“A person commits using a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly uses a cellular telephone or other communication device to commit or to attempt, conspire, or solicit to commit: (A) An escape from the custody of the correctional facility; (B) Engaging in a continuing criminal enterprise, [ARK. CODE ANN.] § 5-64-405; or (C) A violent felony as defined at [ARK. CODE ANN.] § 5-4-501(d)(2)”); ARK. CODE ANN. § 5-54-119(d)(2) (2022) (“Using a prohibited article is a Class A felony.”); ARK. CODE ANN. § 5-4-401(a)(2) (2022) (“For a Class A felony, the sentence shall be not less than six (6) years nor more than thirty (30) years.”).

⁶⁵ ARK. CODE ANN. § 5-4-403(b) (2022) (“When a sentence of imprisonment is imposed on a defendant who has previously been sentenced to imprisonment, whether by a court of this state, a court of another state, or a federal court, the subsequent sentence shall run concurrently with any undischarged portion of the previous sentence unless, upon recommendation of the jury or the court's own motion, the court imposing the subsequent sentence orders it to run consecutively with the previous sentence.”).

⁶⁶ CAL. PENAL CODE § 4576(c) (Deering 2022) (“Any inmate who is found to be in possession of a wireless communication device shall be subject to time credit denial or loss of up to 90 days.”).

Colorado	Not less than one year nor more than eighteen months. ⁶⁷	Discretionary to the judge. ⁶⁸
Connecticut	Not more than one year. ⁶⁹	Discretionary to the judge. ⁷⁰

⁶⁷ COLO. REV. STAT. § 18-8-204.2(1) (2022) (“A person being confined in a detention facility commits the crime of possession of contraband in the second degree if he knowingly obtains or has in his possession contraband as defined in [COLO. REV. STAT. §] 18-8-204(2) unless possession is authorized by rule or regulation promulgated by the administrative head of the detention facility.”); COLO. REV. STAT. ANN. § 18-8-204(2)(n) (2022) (defining “contraband” to include “[a]ny portable electronic communication device, including but not limited to cellular telephones; cloned cellular telephones as defined in [COLO. REV. STAT. ANN. §] 18-9-309; public, private, or family-style radios; pagers; personal digital assistants; any other device capable of transmitting or intercepting cellular or radio signals between providers and users of telecommunication and data services; and portable computers; except those devices authorized by the executive director of the department of corrections or his or her designee.”); COLO. REV. STAT. ANN. § 18-8-204.2(2)(a) (2022) ([p]ossession of contraband in the second degree that involves contraband described in [COLO. REV. STAT. ANN. §] 18-8-204 . . . (2)(n) . . . is a class 6 felony); COLO. REV. STAT. ANN. § 18-1.3-401(V.5)(A) (2022) (providing a table with penalties by felony class).

⁶⁸ COLO. REV. STAT. § 18-1.3-409 (2022) (“Before remitting any mittimus to the department of corrections sentencing a defendant to the custody of the department, a court shall confirm that the mittimus properly reflects the sentencing order of the court and includes all necessary information regarding the sentence and any information as to whether a sentence is to be served concurrent with, or consecutive to, the sentence for any other count or any other case.”).

⁶⁹ CONN. GEN. STAT. § 53a-174b(a) (2022) (“A person is guilty of conveyance or use of an electronic wireless communication device in a correctional institution when such person, without authorization by the Commissioner of Correction or the commissioner’s designee, (1) conveys or possesses with intent to convey an electronic wireless communication device to any inmate of a correctional institution while such inmate is in such institution, or (2) uses an electronic wireless communication device to take a photographic or digital image in a correctional institution.”); CONN. GEN. STAT. ANN. § 53a-174b(b) (2022) (“Conveyance or use of an electronic wireless communication device in a correctional institution is a class A misdemeanor.”); CONN. GEN. STAT. § 53a-26(d)(1) (2022) (providing that a misdemeanor is “[a] class A misdemeanor if the maximum term of imprisonment specified is one year.”).

⁷⁰ CONN. GEN. STAT. § 53a-37 (2022) (“When multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and to the undischarged term or terms in such manner as the court directs at the time of sentence.”).

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Delaware	Not more than three years. ⁷¹	Discretionary to the judge. ⁷²
District of Columbia (D.C.)	Not more than two years. ⁷³	Mandatory. ⁷⁴

⁷¹ DEL. CODE ANN. tit. 11, § 1256(a)(3) (2022) (“A person is guilty of promoting prison contraband when: . . . (3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.”); DEL. CODE ANN. tit. 11, § 1256(b)(1) (2022) (“Promoting prison contraband is a class A misdemeanor. However, promoting prison contraband is a class F felony if any of the following applies: (1) The prison contraband is a deadly weapon, cellular telephone, or any prohibited electronic device not specifically authorized or approved by the Commissioner or designee, any illegal narcotic or look-a-like substance, or any prescription medication, or any item or article that could be used to facilitate an escape.”); DEL. CODE ANN. tit. 11, § 4205(b)(6) (2022) (“The term of incarceration which the court may impose for a felony is fixed as follows: . . . (6) For a class F felony up to 3 years to be served at Level V.”).

⁷² DEL. CODE ANN. tit. 11, § 3901(b) (2022) (“All sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed, unless the person sentenced shall then be undergoing imprisonment under a sentence imposed for any other offense or offenses, in which case the said sentence shall begin to run and be computed, either from the date of imposition thereof or from the expiration of such other sentence or sentences, as the court shall, in its discretion, direct.”).

⁷³ D.C. CODE § 22-2603.02(b) (2022) (“It is unlawful for an inmate, or securely detained juvenile, to possess Class A, Class B, or Class C contraband, regardless of the intent with which he or she possesses it.”); D.C. CODE § 22-2603.01(3)(A)(iii) (2022) (“‘Class B Contraband’ means: . . . (iii) A cellular telephone or other portable communication device and accessories thereto.”); D.C. CODE § 22-2603.01(1) (2022) (“‘Cellular telephone or other portable communication device and accessories thereto’ means any device carried, worn, or stored that is designed, intended, or readily converted to create, receive or transmit oral or written messages or visual images, access or store data, or connect electronically to the Internet, or any other electronic device that enables communication in any form. The term ‘cellular telephone or other portable communication device and accessories thereto’ includes portable 2-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, computers, cameras, and any components of these devices. The term ‘cellular telephone or other portable communication device and accessories thereto’ also includes any new technology that is developed for communication purposes and includes accessories that enable or facilitate the use of the cellular telephone or other portable communication device.”); D.C. CODE § 22-2603.03(b) (2022) (“A person convicted of violating this subchapter with regard to Class B contraband shall be imprisoned for not more than 2 years, fined not more than the amount set forth in [D.C. CODE] § 22-3571.01, or both.”).

⁷⁴ D.C. CODE § 22-2603.03(d) (2022) (“Any term of imprisonment imposed on an inmate or prisoner pursuant to this section shall be: (1) Consecutive to the term of

Florida	Not more than five years. ⁷⁵	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ⁷⁶
Georgia	Not less than one year nor more than five years; unless the inmate is being held for a misdemeanor arrest or conviction, in which case possession of a telecommunication device shall be treated as a misdemeanor. ⁷⁷	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently

imprisonment being served at the time this offense was committed; or (2) If the inmate was confined pending trial or sentencing, consecutive to any term of imprisonment imposed in the case in which the inmate was being detained at the time this offense was committed.”).

⁷⁵ FLA. STAT. ANN. § 944.47(1)(c) (LexisNexis 2022) (“It is unlawful for any inmate of any state correctional institution or any person while upon the grounds of any state correctional institution to be in actual or constructive possession of any article or thing declared by this section to be contraband, except as authorized by the officer in charge of such correctional institution.”); FLA. STAT. ANN. § 944.47(1)(a)6. (LexisNexis 2022) (defining “contraband” as including “[a]ny cellular telephone or other portable communication device intentionally and unlawfully introduced inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge of such correctional institution.”); FLA. STAT. ANN. § 944.47(2)(a) (LexisNexis 2022) (“A person who violates this section as it pertains to an article of contraband described in . . . subparagraph (1)(a)6. commits a felony of the third degree”); FLA. STAT. ANN. § 775.082(3)(e) (LexisNexis 2022) (“A person who has been convicted of any other designated felony may be punished as follows: . . . (e) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.”).

⁷⁶ FLA. STAT. ANN. § 921.16(1) (LexisNexis 2022) (“Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.”).

⁷⁷ GA. CODE ANN. § 42-5-18(c) (2022) (“It shall be unlawful for an inmate to possess . . . a telecommunications device . . . without the authorization of the warden or superintendent or his or her designee.”); GA. CODE ANN. § 42-5-18(a)(3) (2022)

		unless explicitly directed otherwise at sentencing. ⁷⁸
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(“Telecommunications 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 outside a place of incarceration, including a telephone, cellular telephone, personal digital assistant, transmitting radio, or computer connected or capable of being connected to a computer network, by wireless or other technology, or otherwise capable of communicating with a person or device outside of a place of incarceration.”); GA. CODE ANN. § 42-5-18(d)(1) (2022) (“An inmate who commits or attempts to commit a violation of subsection (c) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years; provided, however, that if an inmate violates this Code section while being held pursuant to an arrest or conviction for a misdemeanor offense, the possession of a telecommunications device in violation of this Code section shall be treated as a misdemeanor.”).

⁷⁸ GA. CODE ANN. § 17-10-10(b) (2022) (“Where a person is convicted on more than one indictment or accusation at separate terms of court, or in different courts, and sentenced to imprisonment, the sentences shall be served concurrently, one with the other, unless otherwise expressly provided therein.”).

Guam	Not less than three years nor more than ten years. ⁷⁹	Guam Code Annotated does not address concurrent or consecutive sentencing on two separate sentencing occasions, but it does note that where a single judgment of conviction includes more than one crime, sentences may be run concurrently or consecutively. ⁸⁰
Hawaii	Not more than five years. ⁸¹	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently unless explicitly directed otherwise at sentencing. ⁸²
Idaho	Not more than five years. ⁸³	Mandatory. ⁸⁴
Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Illinois	Not less than four years nor more than fifteen years. ⁸⁵	Mandatory. ⁸⁶

⁷⁹ 9 GUAM CODE ANN. § 58.60(c)(3) (2022) (“No person, including a person in custody . . . , except as authorized by law or with permission of the facility head, shall

knowingly: . . . (3) possess, or attempt to possess, major contraband within a detention facility”); 9 GUAM CODE ANN. § 58.60(c) (2022) (“Any person, including a person in custody, who violates any provision of this Subsection (c) shall be guilty of a felony in the second degree, and upon conviction shall be punished by a sentence of imprisonment for a period of no less than three (3) years, or by a fine of no less than Five Thousand Dollars (\$5,000), or by both such minimum sentence of imprisonment and fine.”); 9 GUAM CODE ANN. § 58.60(a)(2) (2022) (“Major contraband means: . . . (C) any telecommunication or digital equipment prohibited by statute, rule, or policy that provides communication, either in written or verbal messages, or through the transmission of electronic data via the internet. Excluded from this definition is any device having communication capabilities that has been approved by the facility head for investigative or institutional security purposes, or for conducting other official business”); 9 GUAM CODE ANN. § 80.30(b) (2022) (“In the case of a felony of the second degree, the court shall impose a sentence of not less than three (3) years and not more than ten (10) years”); 9 GUAM CODE ANN. § 80.39.1 (2022) (“Notwithstanding any other provision of law, the court may depart from the applicable mandatory minimum sentence if the court finds substantial and compelling reasons on the record that, in giving due regard to the nature of the crime, the history and character of the defendant, and his or her chances of successful rehabilitation, that: (a) imposition of the mandatory minimum sentence would result in substantial injustice to the defendant; and (b) the mandatory minimum sentence is *not* necessary for the protection of the public.”).

⁸⁰ 9 GUAM CODE ANN. § 80.10(b) (2022) (“Where the judgment of conviction included more than one crime, the sentences imposed may run concurrently or consecutively”).

⁸¹ HAW. REV. STAT. ANN. § 710-1023(1)(b) (LexisNexis 2022) (“A person commits the offense of promoting prison contraband in the second degree if: . . . (b) Being a person confined in a correctional or detention facility, the person intentionally makes, obtains, or possesses known contraband.”); HAW. REV. STAT. ANN. § 710-1023(2) (LexisNexis 2022) (“‘Contraband’ means any article or thing, other than a dangerous instrument or drug as defined in [HAW. REV. STAT. ANN.] section 710-1022(2), that a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, or order.”); HAW. REV. STAT. ANN. § 710-1023(3) (“Promoting prison contraband in the second degree is a class C felony.”); HAW. CODE R. § 23-101-1(a) (LexisNexis 2022) (“Any item not specifically authorized for possession by a person by the facility administrator or guidelines shall be contraband and shall be confiscated and subject the person to criminal or disciplinary sanctions, or both.”); HAW. REV. STAT. ANN. § 706-660(1)(b) (LexisNexis 2022) (“[A] person who has been convicted of a . . . class C felony may be sentenced to an indeterminate term of imprisonment When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows: . . . (b) For a class C felony-five years.”).

⁸² HAW. REV. STAT. ANN. § 706-668.5(1) (LexisNexis 2022) (“If multiple terms of imprisonment are imposed on a defendant, whether at the same time or at different times, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or

consecutively. Multiple terms of imprisonment run concurrently unless the court orders or the statute mandates that the terms run consecutively.”).

⁸³ IDAHO CODE § 18-2510(3)(c) (2022) (“No person including a prisoner, except as authorized by law or with permission of the facility head, shall knowingly: . . . (c) Possess, or attempt to possess, major contraband within a correctional facility.”); IDAHO CODE § 18-2510(4) (2022) (“Any person including a prisoner who violates any provision of subsection (3) of this section shall be guilty of a felony and on conviction shall be punished by imprisonment in the state prison for a period not exceeding five (5) years or by a fine not exceeding ten thousand dollars (\$10,000), or by both such imprisonment and fine.”); IDAHO CODE § 18-2510(5)(c)(iv) (2022) (“‘Major contraband’ means: . . . (iv) Any telecommunication equipment or component hardware including, but not limited to, any device carried, worn or stored that is designed or intended to receive or transmit verbal or written messages, access or store data or connect electronically to the internet or any other electronic device that allows communications in any form. Such devices include, but are not limited to, cellular telephones, portable two-way pagers, hand-held radios, global position satellite system equipment, subscriber identity module (SIM) cards, portable memory chips, batteries, chargers, blackberry-type devices or smart phones, personal digital assistants or PDA’s and laptop computers. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities that has been approved by the facility head for investigative or institutional security purposes or for conducting other official business.”).

⁸⁴ IDAHO CODE § 19-2520F (2022) (“Every person who has been found guilty of a commission of a felony on the grounds of a correctional facility located in this state shall have the sentence for such offense begin after all previous sentences have ended.”).

⁸⁵ 720 ILL. COMP. STAT. ANN. 5/31A-1.1(b) (LexisNexis 2022) (“A person commits possessing contraband in a penal institution when he or she knowingly possesses contraband in a penal institution, regardless of the intent with which he or she possesses it.”); 720 ILL. COMP. STAT. ANN. 5/31A-1.1(d)(6) (LexisNexis 2022) (“Bringing into or possessing a weapon, tool to defeat security mechanisms, cutting tool, or electronic contraband in a penal institution is a Class 1 felony.”); 730 ILL. COMP. STAT. ANN. 5/5-4.5-30(a) (LexisNexis 2022) (“The sentence of imprisonment, other than for second degree murder, shall be a determinate sentence of not less than 4 years and not more than 15 years . . .”).

⁸⁶ 730 ILL. COMP. STAT. ANN. 5/5-8-4(d)(6) (LexisNexis 2022) (“If the defendant was in the custody of the Department of Corrections at the time of the commission of the offense, the sentence shall be served consecutive to the sentence under which the defendant is held by the Department of Corrections.”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Indiana	Not more than one year. ⁸⁷	Mandatory. ⁸⁸
Iowa	Not more than five years. ⁸⁹	Mandatory. ⁹⁰
Kansas	Dependent on the offender's criminal history, with the recommended range starting at thirty-one months as the minimum for an offender with either a single misdemeanor or no record and 136 months as the maximum for an offender with three or more	Mandatory, unless the judge finds a mandatory consecutive sentence will result in "manifest injustice." ⁹²

⁸⁷ IND. CODE ANN. § 35-44.1-3-8 (LexisNexis 2022) ("A person who knowingly or intentionally possesses a cellular telephone or other wireless or cellular communications device while incarcerated in a penal facility commits a Class A misdemeanor."); *id.* § 35-50-3-2 ("A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars (\$5,000).").

⁸⁸ IND. CODE ANN. § 35-50-1-2(e) (LexisNexis 2022) ("If, after being arrested for one (1) crime, a person commits another crime: (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.").

⁸⁹ IOWA CODE § 719.7A(1)(b) (2022) ("'Electronic contraband' means a mobile telephone or other hand-held electronic communication device."); *id.* § 719.7A(2)(b) ("A person commits the offense of possessing electronic contraband under this section if the person, not authorized by law, does any of the following: . . . (b) Knowingly makes, obtains, or possesses electronic contraband while confined in a facility, or while being transported or moved incidental to confinement."); *id.* § 719.7A(3) ("A person who possesses electronic contraband commits a class 'D' felony."); *id.* § 902.9(1)(e) ("A class 'D' felon, not a habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least one thousand twenty-five dollars but not more than ten thousand two hundred forty-five dollars.").

⁹⁰ IOWA CODE § 901.8 (2022) ("If a person is sentenced . . . for a crime committed while confined in a detention facility or penal institution, the sentencing judge shall order the sentence to begin at the expiration of any existing sentence.").

⁹² KAN. STAT. ANN. § 21-6606(e)(1) (2022) ("Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated."). *But see id.* § 21-6819(a) (mandatory consecutive sentencing requirement from KAN. STAT. ANN. § 21-6606(e)(1) "shall not apply if such application would result in a manifest injustice.").

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	person felonies. Lowest level offenders' ranges are in a "border box," meaning the judge may impose an "optional nonprison sentence." ⁹¹	

⁹¹ KAN. STAT. ANN. § 21-5914(a)(3) (2022) ("Traffic in contraband in a correctional institution or care and treatment facility is, without the consent of the administrator of the correctional institution or care and treatment facility: . . . (3) any unauthorized possession of any item while in any correctional institution or care and treatment facility."); *id.* § 21-5914(b)(2)(B) ("Traffic in contraband in a correctional institution or care and treatment facility is a: . . . (2) severity level 5, nonperson felony if such items are: . . . (B) defined as contraband by rules and regulations adopted by the secretary of corrections, in a state correctional institution or facility by an employee of a state correctional institution or facility . . ."); KAN. ADMIN. REGS. § 44-2-103(a)(3) (2022) ("A person, including an employee, inmate, visitor, or volunteer shall not, without the consent of the warden: . . . (3) possess any item while in any correctional facility."); *id.* § 44-2-103(b)(13) ("Any item,' as used in subsection (a), shall include but not be limited to the following: . . . (13) cameras, recording devices, one or two-way transmitting devices, and similar devices and components thereof, including tapes, batteries, and film."); KAN. STAT. ANN. § 21-6804(a) (2022) (providing a sentencing grid for nondrug felony crimes); *id.* § 21-6804(e)(1) ("The sentencing court has discretion to sentence at any place within the sentencing range."); *id.* § 21-6804(f) (providing border boxes on sentencing grid that permit optional nonprison sentence); *id.* § 21-6804(q) (defining "optional nonprison sentence").

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Kentucky	Not less than one year nor more than five years. ⁹³	Discretionary to the judge, but the term of imprisonment for new offense will run concurrently unless explicitly directed otherwise at sentencing. Alternatively, the judge may add imprisonment on to any unserved portion of the previous sentence. ⁹⁴

⁹³ KY. REV. STAT. ANN. § 520.050(1)(b) (LexisNexis 2022) (“A person is guilty of promoting contraband in the first degree when: . . . (b) Being a person confined in a detention facility or a penitentiary, he knowingly makes, obtains, or possesses dangerous contraband.”); *id.* § 520.050(2) (“Promoting contraband in the first degree is a Class D felony.”); *id.* § 520.010(3) (providing that “[d]angerous contraband” includes “cell phones not authorized under [KY. REV. STAT. ANN. §] 441.111”); *id.* § 441.111 (providing that jailers are allowed to create policies for possession of cell phones by “the jailer, deputy jailers, attorneys, and non-lawyer assistants.”); *id.* § 532.060(2)(d) (“Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are: . . . (d) For a Class D felony, not less than one (1) year nor more than five (5) years.”); *id.* § 532.110(1) (“When multiple sentences of imprisonment are imposed on a defendant for more than one (1) crime, including a crime for which a previous sentence of probation or conditional discharge has been revoked, the multiple sentences shall run concurrently or consecutively as the court shall determine at the time of sentence . . .”).

⁹⁴ KY. REV. STAT. ANN. § 532.110(2) (LexisNexis 2022) (“If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run concurrently with any other sentence which the defendant must serve”); *id.* § 532.110(3) (“Notwithstanding any provision in this section to the contrary, if a person is convicted of an offense that is committed while he is imprisoned in a penal or reformatory institution, . . . the sentence imposed for that offense may be added to

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Louisiana	Not more than 10 years. ⁹⁵	Mandatory. ⁹⁶

the portion of the term which remained unserved at the time of the commission of the offense.”).

⁹⁵ LA. STAT. ANN. § 14:402(B) (2022) (“No person shall possess contraband upon the grounds of any state correctional institution.”); *id.* § 14:402(D)(9) (“‘Contraband’ as used herein means: . . . (9) Any telecommunications equipment or component hardware, including but not limited to cellular phones, pagers, beepers, global satellite system equipment, subscriber identity module (SIM) cards, portable memory chips, batteries, and chargers, whether or not such equipment may be intended for use in planning or aiding an escape or attempt to escape from any institution, unless authorized by the warden of the institution.”); *id.* § 14:402(G)(1) (“Whoever violates any provision of this Section shall be fined not less than five hundred dollars and not more than ten thousand dollars and shall be imprisoned with or without hard labor for not more than ten years.”).

⁹⁶ LA. STAT. ANN. § 14:402(G)(2) (2022) (“If the person who violates any provision of this Section is incarcerated in the state correctional institution or the municipal or parish prison or jail in which the contraband is . . . possessed . . . , the sentence imposed . . . shall be served consecutively to the sentence the person was serving at the time the violation of this Section occurred.”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Maine	Not more than five years. ⁹⁷	The sentences will presumptively be run concurrently, but the judge may justify a consecutive sentence based on the commission of a new offense while under a previously imposed sentence and while the defendant was incarcerated. ⁹⁸

⁹⁷ ME. REV. STAT. ANN. tit. 17-A, § 757(1)(B) (2022) (“A person is guilty of trafficking in prison contraband if: . . . (B) Being a person in official custody, the person intentionally makes, obtains or possesses contraband.”); *id.* § 757(3) (“Trafficking in prison contraband is a Class C crime.”); *id.* § 1604(1)(C) (“Unless a different maximum term of imprisonment is specified by statute, the maximum term of imprisonment is as follows: . . . (C) In the case of a Class C crime, 5 years.”).

⁹⁸ ME. REV. STAT. ANN. tit. 17-A, § 1608(1) (2022) (“The court shall state in the sentence of imprisonment whether a sentence must be served concurrently with or consecutively to any other sentence previously imposed or to another sentence imposed on the same date. The sentences must be concurrent except that the court may impose the sentences consecutively after considering the following factors: . . . (B) The individual was under a previously imposed . . . sentence and was . . . under incarceration or on a release program or period of supervised release at the time the individual committed a subsequent offense.”).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Maryland	Not more than five years. ⁹⁹	Mandatory. ¹⁰⁰
Massachusetts	Massachusetts does not have a criminal statute for possession of contraband phones by inmates and instead punishes inmates for such contraband using administrative penalties. ¹⁰¹ Massachusetts does, however, punish illicit delivery of contraband articles into penal institutions with “imprisonment in the state prison for not more than three years or in jail for not more than two and one half years.” ¹⁰²	Not applicable.

⁹⁹ MD. CODE ANN., CRIM. LAW § 9-417(b)(4) (LexisNexis 2022) (“A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device, telecommunication device charger, or SIM card.”); *id.* § 9-417(c) (“A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$3,000 or both.”).

¹⁰⁰ MD. CODE ANN., CRIM. LAW § 9-417(d) (LexisNexis 2022) (“A sentence imposed for a violation of [MD. CODE ANN., CRIM. LAW § 9-417](b)(4) shall be consecutive to any sentence that the person was serving at the time of the crime or that had been imposed but was not yet being served at the time of sentencing.”).

¹⁰¹ 103 MASS. CODE REGS. 430.24(2-1) (2022) (“Unauthorized possession of items or material likely to be used in an escape” is a Category Two infraction.); *id.* 430.24(3-2) (“Receipt or possession of contraband of items not authorized for retention by inmates” is a Category Three infraction.); *id.* 430.24(4-1) (“Receipt or possession of contraband” is a Category Four infraction.); *id.* 430.25 (providing a list of sanctions for different violation categories).

¹⁰² MASS. ANN. LAWS ch. 268, § 31 (LexisNexis 2022) (providing the penalty for delivering contraband articles into penal institutions).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Michigan	Not more than five years. ¹⁰³	Discretionary to the judge. ¹⁰⁴
Minnesota	Minnesota does not have a criminal statute for possession of contraband phones by inmates and instead punishes inmates for such contraband using administrative penalties. ¹⁰⁵	Not applicable.
Mississippi	Not less than three years nor more than fifteen years. ¹⁰⁶	Discretionary to the judge, but the term of imprisonment for the new

¹⁰³ MICH. COMP. LAWS SERV. § 801.262a(2) (LexisNexis 2022) (“A prisoner shall not possess or use a cellular telephone or other wireless communication device in a jail or a building appurtenant to a jail or on grounds used for jail purposes except as authorized by the person in charge of the jail.”); *id.* § 801.265(1) (“[A] person who violates this act is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$1,000.00, or both.”).

¹⁰⁴ MICH. COMP. LAWS SERV. § 769.1h(1) (LexisNexis 2022) (“A judgment of sentence committing an individual to the jurisdiction of the department of corrections shall specify whether the sentence is to run consecutively to or concurrently with any other sentence the defendant is or will be serving, as provided by law.”).

¹⁰⁵ Minn. Dep’t of Corr. Pol’y 301.030(A)(7) (Jan. 15, 2019), <https://policy.doc.mn.gov/DOCPolicy> (providing that prohibited contraband in Minnesota Department of Corrections Facilities include “[c]ameras of any type, recording equipment, personal communication devices (two-way radios, etc.), personal transmitting pagers, and other electronic devices”); Minn. Dep’t of Corr. Pol’y 303.010 (Jan. 5, 2021), <https://policy.doc.mn.gov/DOCPolicy/> (providing the policy for punishing inmates found with contraband).

¹⁰⁶ MISS. CODE ANN. § 47-5-193(1) (2022) (“It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, contraband item, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards or chargers on property within the state belonging to the department, a county, a municipality, or other entity that is occupied or used by offenders, except as authorized by law.”); *id.* § 47-5-195 (“Any person who violates any provision of Section 47-5-193 or 47-5-194 shall be guilty of a felony and upon conviction shall be punished by confinement in the Penitentiary for not less than three (3) years nor more than fifteen (15) years, and may be fined not more than Twenty-five Thousand Dollars (\$25,000.00), or both.”).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
		offense will run concurrently unless explicitly directed otherwise at sentencing. The statute suggests that terms of imprisonment for subsequent crimes should be run consecutively, but only requires consecutive terms of imprisonment for individuals in some kind of released status as opposed to already-confined offenders. ¹⁰⁷

¹⁰⁷ MISS. R. CRIM. P. 26.7 (“Unless otherwise provided by law, the court may direct that the sentence being imposed will be served concurrently with, or consecutively to, any other sentence previously or simultaneously imposed upon the defendant by any court. When sentencing orders are silent, sentences shall run concurrently.”); MISS. CODE ANN. § 99-19-21(1) (2022) (“When a person is sentenced to imprisonment on two (2) or more convictions, the imprisonment on the second, or each subsequent conviction shall, in the discretion of the court, commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction.”); *id.* § 99-19-21(2) (“When a person is sentenced to imprisonment for a felony committed while the person was on parole, probation, earned-release supervision, post-release supervision or suspended sentence, the

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Missouri	Not more than one year. ¹⁰⁸	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently unless explicitly directed otherwise at sentencing. ¹⁰⁹
Montana	Montana does not have a criminal statute for possession of contraband phones by inmates and instead punishes inmates for contraband using administrative penalties. ¹¹⁰	Not applicable.

imprisonment shall commence at the termination of the imprisonment for the preceding conviction. The term of imprisonment for a felony committed during parole, probation, earned-release supervision, post-release supervision or suspended sentence shall not run concurrently with any preceding term of imprisonment. If the person is not imprisoned in a penitentiary for the preceding conviction, he shall be placed immediately in the custody of the Department of Corrections to serve the term of imprisonment for the felony committed while on parole, probation, earned-release supervision, post-release supervision or suspended sentence.”).

¹⁰⁸ MO. REV. STAT. § 221.111 (2022) (providing a person commits an offense of “possession of unlawful items in a prison or jail” when they knowingly possess “any article or item of personal property which a prisoner is prohibited by law, . . . [rule], or regulation of the department of corrections from receiving or possessing,” which is a Class A misdemeanor); *id.* § 558.011(1) (penalty for Class A misdemeanor); Mo. Dep’t of Corr. Offender Rulebook ¶ 3.2 (2019), https://doc.mo.gov/sites/doc/files/media/pdf/2019/04/Offender_Rulebook_REVISED_2019.pdf (classifying possession or use of an unauthorized telecommunications device as possession of dangerous contraband).

¹⁰⁹ MO. REV. STAT. § 558.026(1) (2022) (“Multiple sentences of imprisonment shall run concurrently unless the court specifies that they shall run consecutively . . .”).

¹¹⁰ Mont. Dep’t of Corr., Mont. State Prison Operational Proc. 3.4.2, *Prohibited Acts*, § IV.A.3.12, <https://cor.mt.gov/DataStatsContractsPoliciesProcedures/DataDocumentsandLinks/DOCPolicies/Chapter3/3.4.2-Prohibited-Acts.pdf> (effective Jan. 4, 1996, revised May 6, 2015) (stating that possession of contraband is prohibited in all

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	<p>Montana does, however, punish “knowing[] or purpose[ful] transfer [of] any illegal article or weapon to a person subject to official detention” The penalty for this crime is “imprison[ment] in a state prison for a term not to exceed 13 months . . . if the illegal article, other than a weapon or dangerous drug.”¹¹¹</p> <p>“Illegal article” is not defined to explicitly include contraband phones, but they could reasonably fall within this definition.</p>	
Nebraska	<p>Phones, in some instances, may be regarded as an implement of escape¹¹² and therefore possession of a contraband phone by an inmate could reasonably be regarded as a violation of Neb. Rev. Stat. Ann. § 28-913(1), which is a Class I misdemeanor.¹¹³ This carries a</p>	<p>Nebraska code does not clearly answer the matter of consecutive or concurrent sentencing for</p>

Montana Department of Correction facilities); Mont. Dep’t of Corr., Mont. State Prison Operational Procedure 3.1.17b, *Contraband Control*, § II, <https://cor.mt.gov/DataStatsContractsPoliciesProcedures/Procedures/MSP-Procedures/3.1.17b--Contraband--Control.pdf> (effective Feb. 19, 2001, revised Dec. 15, 2021) (stating contraband includes “[a]ny item possessed by an offender or found within the facility that is illegal by law, prohibited by policy or procedure, or unauthorized by those legally charged with the administration and operation of the facility,” including “[a]ny item in the possession of an inmate that is not authorized for his retention”).

¹¹¹ See MONT. CODE ANN. § 45-7-307 (2021) (describing crime and penalty for transfer of illegal article).

¹¹² See 2019 DOJ OIG REPORT, *supra* note 40, at 1; M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹¹³ See NEB. REV. STAT. ANN. § 28-913(1) (LexisNexis 2022) (“A person commits an offense if he unlawfully introduces within a detention facility, or unlawfully

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	<p>penalty of not more than one year imprisonment.¹¹⁴</p> <p>Nebraska does have an administrative statute that directly addresses possession of contraband electronic communication devices, using administrative penalties for infractions including but not limited to disciplinary segregation and loss of good time.¹¹⁵</p>	<p>misdemeanors, but for felonies, the question is discretionary to the judge.¹¹⁶</p>

provides an inmate with, any weapon, tool, or other thing which may be useful for escape. An inmate commits an offense if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape.”); *id.* § 28-913(2) (“Introducing escape implements is a Class I misdemeanor.”).

¹¹⁴ NEB. REV. STAT. ANN. § 28-106(1) (2022) (providing misdemeanor penalties).

¹¹⁵ 68 NEB. ADMIN. CODE § 005.II[U] (2022) (“Following are acts and behaviors that are prohibited and subject to disciplinary sanctions. . . . II[U] Possession of Unauthorized Electronic Communication Devices. Possessing cellular telephones, pagers, personal digital assistants (PDA’s), or other electronic communication devices without authorization.”); 68 NEB. ADMIN. CODE § 0011.02 (2022) (providing that administrative penalties for violations of Class II offenses include confinement in disciplinary segregation and loss of good time).

¹¹⁶ *See* NEB. REV. STAT. ANN. § 29-2204(6)(c) (LexisNexis 2022) (stating that for sentences for felonies other than Class III, IIIA, or IV felonies, “[i]f the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.”); *id.* § 29-2204.02(7)(c) (for sentences for Class III, IIIA, or IV felonies, “[i]f the court imposes more than one sentence upon an offender or imposes a sentence upon an offender who is at that time serving another sentence, the court shall state whether the sentences are to be concurrent or consecutive.”). There is some indication that a misdemeanor sentence can be run consecutively or concurrently. *See id.* § 29-2204.02(5) (“For any sentence of imprisonment for a misdemeanor imposed consecutively or concurrently with a sentence of imprisonment for a Class III, IIIA, or IV felony for an offense committed on or after August 30, 2015, the court shall impose a determinate sentence within the applicable range in [NEB. REV. STAT. ANN. §] 28-106 unless the person is also committed to the Department of Correctional Services in accordance with [NEB. REV. STAT. ANN. §] 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Nevada	If prisoner is in Department of Corrections institution or facility, penalty is not less than one year of imprisonment and not more than four years of imprisonment. ¹¹⁷	Mandatory. ¹¹⁸

committed prior to August 30, 2015, or (b) a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA felony.”).

¹¹⁷ NEV. REV. STAT. ANN. § 212.165(3) (LexisNexis 2021) (“A prisoner confined in an institution or a facility of the Department [of Corrections], or any other place where prisoners are authorized to be or are assigned by the Director of the Department, shall not, without lawful authorization, possess or have in his or her custody or control a portable telecommunications device. A prisoner who violates this subsection is guilty of a category D felony and shall be punished as provided in N[EV.] R[EV.] S[TAT. ANN.] § 193.130.”); *id.* § 212.165(4) (“A prisoner confined in a jail or any other place where such prisoners are authorized to be or are assigned by the sheriff, chief of police or other officer responsible for the operation of the jail, shall not, without lawful authorization, possess or have in his or her custody or control a portable telecommunications device.”); *id.* § 212.165(4)(a)–(c) (providing variable penalties for violations of NEV. REV. STAT. ANN. § 212.165(4), depending on the underlying charge against the prisoner resulting in confinement); *id.* § 193.130(2)(d) (“A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years.”).

¹¹⁸ NEV. REV. STAT. ANN. § 212.165(5)(b) (LexisNexis 2021) (providing that a penalty for violation of NEV. REV. STAT. ANN. § 212.165(3) or NEV. REV. STAT. ANN. § 212.165(4) “[m]ust run consecutively after the prisoner has served any sentences imposed upon the prisoner for the offense or offenses for which the prisoner was in lawful custody or confinement when the prisoner violated the provisions of subsection 3 or 4”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
New Hampshire	Not more than seven years. ¹¹⁹	Discretionary to the judge. ¹²⁰
New Jersey	Not less than three years nor more than five years. ¹²¹	Discretionary to the judge. ¹²²

¹¹⁹ N.H. CODE ADMIN. R. ANN. COR 306.01(d)(15) (LexisNexis 2022) (“Contraband not allowed inside departmental facilities shall include the following . . . (15) Cell-phones not issued by or approved in writing by the department.”); *id.* 306.02 (“The possession, transport, introduction, use, sale or storage of contraband on departmental property shall be prohibited under the provisions of [N.H.] R[EV.] S[TAT.] A[NN. §] 622:24 and [N.H.] R[EV.] S[TAT.] A[NN. §] 622:25.”); N.H. REV. STAT. ANN. § 622:24 (LexisNexis 2022) (“No person shall deliver or procure to be delivered or have in his or her possession with intent to deliver to a prisoner confined in the state prisons, or deposit or conceal in or about the prisons, or in any building or upon any land appurtenant thereto, or in any vehicle entering the premises belonging to the prisons, any article with intent that a prisoner shall receive or obtain it, or receive from a prisoner any article with intent to convey it out of the prisons, or bring into or attempt to take from the prisons any article contrary to the rules and regulations established by the commissioner of corrections and without the knowledge and permission of the commissioner of corrections, or designee.”); *id.* § 622:25 (“Any person who violates any provision of [N.H.] R[EV.] S[TAT.] A[NN. §] 622:24 shall be guilty of a class B felony.”); *see also id.* § 642:7(II) (“A person is guilty of a class B felony if: . . . II. Being a person in official custody, as defined in [N.H.] R[EV.] S[TAT.] A[NN. §] 642:6, II, he knowingly procures, makes or possesses anything which may facilitate escape.”); *id.* § 651:2(II)(b) (stating that the maximum penalty for class B felony is seven years).

¹²⁰ *Duquette v. Warden, N.H. State Prison*, 154 N.H. 737, 741–47 (2007) While N.H. REV. STAT. ANN. § 651:3 “does not address whether the trial court may impose consecutive sentences,” the state’s “legislature has not acted to circumscribe the trial courts’ power to impose consecutive sentences; indeed, it had earlier done so, but repealed that statute. Therefore, the trial courts retain the common law authority to impose such sentences.” *Id.*

¹²¹ N.J. STAT. ANN. § 2C:29-10(b) (West 2022) (“A person who possesses or uses an electronic communication device or a battery or device to recharge an electronic communication device while confined to a State correctional facility, secure juvenile facility, county correctional facility, or county juvenile detention facility is guilty of a crime of the third degree.”); *id.* § 2C:43-6(a)(3) (“In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years . . .”).

¹²² N.J. STAT. ANN. § 2C:44-5(d) (“[M]ultiple terms of imprisonment shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.”). For a helpful primer on New Jersey sentencing law, see generally HEATHER YOUNG KEAGLE, MANUAL ON NEW JERSEY SENTENCING LAW

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
New Mexico	<p>New Mexico does not have a criminal statute for possession of contraband phones by inmates.</p> <p>New Mexico does, however, punish bringing contraband into places of imprisonment, a third degree felony.¹²³ The statute explicitly includes electronic communication devices in its definition of contraband.¹²⁴</p> <p>Because “contraband” includes such devices, possession of such devices is presumably administratively punished within a correctional institution. The Code of New Mexico Rules does not clarify and it does not appear that the New Mexico Corrections</p>	Not applicable.

(2018, revised Aug. 4, 2022), <https://www.njcourts.gov/attorneys/assets/attyresources/manualsentencinglaw.pdf?c=gFx>.

¹²³ See N.M. STAT. ANN. § 30-22-14(A) (LexisNexis 2022) (“Bringing contraband into a prison consists of knowingly and voluntarily carrying, transporting or depositing contraband onto the grounds of the penitentiary of New Mexico or any other institution designated by the corrections department for the confinement of adult prisoners. Whoever commits bringing contraband into a prison is guilty of a third-degree felony.”).

¹²⁴ N.M. STAT. ANN. § 30-22-14(C)(5) (As used in this section, “‘contraband’ means: . . . (5) an electronic communication or recording device brought onto the grounds of the institution for the purpose of transfer to or use by a prisoner.”); *id.* § 30-22-14(D) (“As used in this section, ‘electronic communication or recording device’ means any type of instrument, device, machine or equipment that is designed to transmit or receive telephonic, electronic, digital, cellular, satellite or radio signals or communications or that is designed to have sound or image recording abilities or any part or component of such instrument, device, machine or equipment. ‘Electronic communication or recording device’ does not include a device that is or will be used by prison or jail personnel in the regular course of business or that is otherwise authorized by the warden.”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	Department publishes its internal regulations for punishment for inmate possession of contraband.	
New York	Not more than seven years. ¹²⁵	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently unless explicitly directed. ¹²⁶
North Carolina	Phones, in some instances, may be regarded as a tool, device, or	Discretionary to the judge,

¹²⁵ N.Y. PENAL LAW § 205.25(2) (Consol. 2022) (“A person is guilty of promoting prison contraband in the first degree when: . . . 2. Being a person confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any dangerous contraband.”); N.Y. PENAL LAW § 205.25 (“Promoting prison contraband in the first degree is a class D felony.”); *id.* § 205.00(4) (“‘Dangerous contraband’ means contraband which is capable of such use as may endanger the safety or security of a detention facility or any person therein.”); *People v. Green*, 119 A.D.3d 23, 29 (N.Y. App. Div. 3d Dept. 2014) (“Based upon our review of the record as whole—particularly the detailed and specific testimony offered by the supervising superintendent—we are satisfied that the People met their burden of establishing that the cell phone seized from defendant constituted dangerous contraband under the test set forth in [*People v. Finley*, 10 N.Y.3d 647, 657 (2008)].”); N.Y. PENAL LAW § 70.00(2)(d) (“The maximum term of an indeterminate sentence shall be at least three years and the term shall be fixed as follows: . . . (d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years.”). *But see id.* § 70.00(4) (“When a person, other than a second or persistent felony offender, is sentenced for a class D or class E felony, and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.”). A sentence for promoting prison contraband in the first degree for a cellular telephone should generally result in an “indeterminate sentence,” as defined in N.Y. PENAL LAW § 70.00(1).

¹²⁶ For indeterminate sentences, the non-binding presumption is that the penalty for the offense will run concurrently with other terms of imprisonment. *See* N.Y. PENAL LAW § 70.25.

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	instrument to affect an escape ¹²⁷ and therefore possession of a contraband phone by an inmate could reasonably be regarded as a violation of N.C. Gen. Stat. § 14-258(c), which is a Class H felony. ¹²⁸ This carries a penalty of not more than twenty-five months imprisonment. ¹²⁹	but the term of imprisonment for the new offense will run concurrently unless explicitly directed otherwise at sentencing. ¹³⁰

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
North Dakota	Phones, in some instances, may be regarded as a tool or other object which may be useful for escape ¹³¹ and therefore possession of a contraband phone by an inmate could reasonably be regarded as a violation of N.D. Cent. Code § 12.1-08-09(2), which is a Class C	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently unless explicitly directed

¹²⁷ See 2019 DOJ OIG REPORT, *supra* note 40, at 1; M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹²⁸ N.C. GEN. STAT. § 14-258(c) (2022) (“Any person who sells, trades, conveys, or provides any of the following to a prisoner is guilty of a Class H felony: (1) An article forbidden by prison rules[; or] (2) A letter, oral message, weapon, tool, good, clothing, device, or instrument, to effect an escape, or aide in an assault or insurrection.”).

¹²⁹ N.C. GEN. STAT. § 15A-1340.17 (2022) (providing a penalty grid for North Carolina felonies).

¹³⁰ *Id.* § 15A-1354(a) (“When multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, including a term of imprisonment in another jurisdiction, the sentences may run either concurrently or consecutively, as determined by the court. If not specified or not required by statute to run consecutively, sentences shall run concurrently.”).

¹³¹ See 2019 DOJ OIG REPORT, *supra* note 40, at 1; M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

2023 *PENALTIES FOR POSSESSION OF CONTRABAND* 1205

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	felony. ¹³² This carries a penalty of not more than five years. ¹³³	otherwise at sentencing. ¹³⁴
Northern Mariana Islands	The Commonwealth of the Northern Mariana Islands does not have a criminal statute for possession of telecommunications devices or cell phones by inmates and instead punishes inmates for such contraband using administrative penalties. ¹³⁵ “Contraband” is not defined in its Administrative Code to explicitly include telecommunications	Not applicable.

¹³² N.D. CENT. CODE § 12.1-08-09(2) (2021) (“An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape.”).

¹³³ *Id.* § 12.1-32-01(4) (“Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows: . . . 4. Class C felony, for which a maximum penalty of five years’ imprisonment, a fine of ten thousand dollars, or both, may be imposed.”).

¹³⁴ *Id.* § 12.1-32-11(1) (“Unless the court otherwise orders, when a person serving a term of commitment imposed by a court of this state is committed for another offense or offenses, the shorter term or the shorter remaining term shall be merged in the other term. When a person on probation or parole for an offense committed in this state is sentenced for another offense or offenses, the period still to be served on probation or parole shall be merged in any new sentence of commitment or probation. A court merging sentences under this subsection shall forthwith furnish each of the other courts previously involved and the penal facility in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged. A court which imposed a sentence which is merged pursuant to this subsection shall modify such sentence in accordance with the effect of the merger.”).

¹³⁵ 57 N. MAR. I. ADMIN. CODE § 57-20.1-810 (2019) (“Possession of contraband is against Division regulations and makes the prisoner involved subject to disciplinary action. ‘Contraband’ is defined as any tangible item, which the prisoner does not have permission to possess. If the contraband is illegal, the matter is reported to the detective bureau of DPS for formal investigation and action.”). Depending on the gravity of the violation, penalties vary. *See generally id.* § 57-20.1-625 (providing classification of violations).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	devices, but a contraband phone could reasonably fall within the scope of the term. ¹³⁶	
Ohio	<p>Ohio does not have a criminal statute for possession of contraband phones by inmates and instead punishes inmates for such contraband using administrative penalties, including but not limited to restrictive housing and loss of earned credit.¹³⁷</p> <p>Ohio does, however, punish knowing delivery of a cellular telephone or other electronic communications device to an inmate. This crime is a first degree misdemeanor punishable by imprisonment of not more than 180 days, unless limited circumstances apply.¹³⁸</p>	Not applicable.

¹³⁶ See 2019 DOJ OIG REPORT, *supra* note 40, at 1; M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹³⁷ OHIO ADMIN. CODE 5120-9-06(C)(51) (2022) (“Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given” is a rule violation.); *id.* 5120-9-08(L) (stating the penalties for administrative rule violation, including restrictive housing and loss of earned credit); *Id.* 5120-9-55(A)(1) (“Any items referred to in section 2921.36 of the Revised Code shall also be considered major contraband.”).

¹³⁸ OHIO REV. CODE ANN. § 2921.36(E) (LexisNexis 2022) (“No person shall knowingly deliver, or attempt to deliver, to any person who is confined in a detention facility, to a child confined in a youth services facility, or to a prisoner who is temporarily released from confinement for a work assignment a cellular telephone, two-way radio, or other electronic communications device.”). This statute also covers penalties for the delivery of a telecommunications device into a detention facility. *Id.* § 2921.36(G)(5) (“Whoever violates division (E) of this section is guilty of illegal conveyance of a communications device onto the grounds of a specified governmental facility, a misdemeanor of the first degree, or if the offender previously has been convicted of or pleaded guilty to a violation of division (E) of this section, a felony

2023 *PENALTIES FOR POSSESSION OF CONTRABAND* 1207

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Oklahoma	Not more than two years. ¹³⁹	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ¹⁴⁰

of the fifth degree.”); *id.* § 2929.24(A)(1) (“[I]f the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this chapter, the court shall impose a definite jail term that shall be one of the following: (1) For a misdemeanor of the first degree, not more than one hundred eighty days.”).

¹³⁹ OKLA. STAT. ANN. tit. 57, § 21(E) (2022) (“Any person who knowingly, willfully and without authority brings into or has in his or her possession in any secure area of a jail or state penal institution or other secure place where prisoners are located any cellular phone or electronic device capable of sending or receiving any electronic communication shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not exceeding two (2) years, or by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment.”).

¹⁴⁰ OKLA. STAT. ANN. tit. 21, § 61.1 (2022) (“When any person is convicted of two (2) or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for each conviction arrives at a state penal institution on different dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence.”).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Oregon	Not more than five years. ¹⁴¹	Mandatory. ¹⁴²
Pennsylvania	Not more than five years. ¹⁴³	Discretionary to the judge. ¹⁴⁴

¹⁴¹ OR. REV. STAT. § 162.185(1)(b) (2022) (“A person commits the crime of supplying contraband if: . . . (b) Being confined in a correctional facility, youth correction facility or state hospital, the person knowingly makes, obtains or possesses any contraband.”); *id.* § 162.185(2) (“Supplying contraband is a Class C felony.”); *id.* § 162.135(1)(a)(D) (“‘Contraband’ means: . . . (D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.”); OR. ADMIN. R. § 291-127-0470(3) (2022) (regarding prohibited contraband: “[e]lectronic devices (e.g. cell phones, smartwatches, pagers, tablets) of any kind, whether worn or hand-held, that has the capability of audio or video recording, photography, or cell phone capabilities are not permitted.”); OR. REV. STAT. § 161.605(3) (2022) (“The maximum term of an indeterminate sentence of imprisonment for a felony is as follows . . . (3) For a Class C felony, 5 years.”).

¹⁴² OR. REV. STAT. § 137.635(2) (2022) (supplying contraband is not a determinate sentence crime); *id.* § 137.123(3) (“When a defendant is sentenced for a crime committed while the defendant was incarcerated after sentencing for the commission of a previous crime, the court shall provide that the sentence for the new crime be consecutive to the sentence for the previous crime.”).

¹⁴³ 18 PA. CONS. STAT. § 5123(c.2) (2022) (“An inmate in a correctional institution, prison, jail, detention facility or mental hospital, or any building appurtenant thereto, commits a misdemeanor of the first degree if he has in his possession any telecommunication device without the written permission of the superintendent, warden or otherwise authorized individual in charge of a correctional institution, prison, jail, detention facility or mental hospital.”); *id.* § 5123(e) (defining a telecommunication device as “[a]ny type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of such instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications. The term shall include, but not be limited to, cellular phones, digital phones and modem equipment devices.”); *id.* § 106(b)(6) (“A crime is a misdemeanor of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than five years.”).

¹⁴⁴ 42 PA. CONS. STAT. § 9721(a) (2022) (explaining that sentencing courts may impose sentence consecutively or concurrently); 234 PA. CODE § 705(B) (2022) (“When more than one sentence is imposed at the same time on a defendant, or when a sentence is imposed on a defendant who is sentenced for another offense, the judge shall state whether the sentences shall run concurrently or consecutively. If the

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Puerto Rico	<p>The Commonwealth of Puerto Rico does not have a criminal statute for possession of contraband phones by inmates.</p> <p>Puerto Rico does, however, punish introduction of “object[s] that could affect the order or security in any penal institution . . . , from within or from outside, to any inmate” as a fourth degree felony, punishable by not less than six months and not more than three years.”¹⁴⁵</p>	Not applicable.

sentence is to run concurrently, the sentence shall commence from the date of imposition unless otherwise ordered by the judge.”).

¹⁴⁵ P.R. LAWS ANN. tit. 33, § 4694(e) (2011) (“Fourth degree felony. – Entails a punishment of imprisonment for a fixed term in natural years which shall not be less than six (6) months and one (1) day, nor more than three (3) years.”). “Any person who sells, introduces, or helps to sell or who has in his possession with the intent to introduce or sell narcotics, drugs or any other controlled substance or any type of weapon, alcoholic or intoxicating beverages, explosives, projectiles or other object that could affect the order or security in any penal institution or facility in the correctional system, from within or from outside, to any inmate, knowing he/she is an inmate, shall incur a fourth degree felony.” *Id.* § 4911.

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
	An “object that could affect the order or security in any penal institution or facility in the correctional system” is not defined, but a contraband phone could reasonably fall within this definition. ¹⁴⁶	
Rhode Island	Not more than five years. ¹⁴⁷	Discretionary to the judge. ¹⁴⁸

¹⁴⁶ P.R. LAWS ANN. tit. 33, § 4911 (2011); 2019 DOJ OIG REPORT, *supra* note 40, at 1; *see* PARSONS ET AL., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹⁴⁷ 11 R.I. GEN. LAWS § 11-25-14.1(a) (2022) (“It shall be unlawful for any prisoner to possess any portable electronic communication device, including, but not limited to, cellular telephones, cloned cellular telephones, two-way radios, pagers, personal digital assistants, or any other device capable of transmitting or intercepting cellular or radio signals between providers and users of telecommunication and data services. Any violation of this provision shall be punishable by a fine not to exceed five thousand dollars (\$5,000), a prison term not to exceed five (5) years, or both.”).

¹⁴⁸ 12 R.I. GEN. LAWS § 12-19-5 (2022) (“Whenever any person shall be convicted of any offense punishable by imprisonment, that person being at the time under sentence of imprisonment on a former conviction, the court passing the subsequent sentence may sentence the person to the term of imprisonment provided by law to commence at the expiration of the term of imprisonment under the former sentence or sentences.”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
South Carolina	Not less than one year nor more than 10 years. ¹⁴⁹	Discretionary to the judge, but the term of imprisonment for the new offense will run concurrently unless explicitly directed otherwise at sentencing. ¹⁵⁰

¹⁴⁹ S.C. CODE ANN. § 24-3-950 (2022) (“It shall also be unlawful for any prisoner under the jurisdiction of the Department of Corrections to possess any matter declared to be contraband. Matters considered contraband within the meaning of this section shall be those which are determined to be such by the director and published by him in a conspicuous place available to visitors and inmates at each correctional institution. Any person violating the provisions of this section shall be deemed guilty of a felony and, upon conviction, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.”); *see also id.* § 24-7-155 (2022) (“It is unlawful for an inmate of a facility to possess a matter declared to be contraband. Matters considered contraband within the meaning of this section are those which are designated as contraband and published by the Department of Corrections as Regulation 33-1 of the Department of Corrections A person violating the provisions of this section is guilty of a felony and, upon conviction, must be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both.”). *Compare* S.C. CODE ANN. REGS. § 33-1 (2022) (defining contraband to include “[a]ny item which was not issued to the prisoner officially or which cannot be purchased by him or her in the prison canteen.”); *with* OFF. OF THE DEPUTY DIR. OF OPERATIONS, S.C. DEP’T OF CORR., *OP-22.35, CONTRABAND CONTROL* (2022), <https://www.doc.sc.gov/policy/OP-22-35.htm.pdf> (defining contraband to include cell phones).

¹⁵⁰ *Tant v. S.C. Dep’t of Corr.*, 408 S.C. 334, 342 (2014) (“The rule of law is well settled that two or more sentences of a defendant to the same place of confinement run concurrently, in the absence of specific provisions in the judgment to the contrary”) (quoting *Finley v. State*, 219 S.C. 278, 282 (1951)).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
South Dakota	Not more than one year. ¹⁵¹	Discretionary to judge. ¹⁵²
Tennessee	Punished only with a fine. ¹⁵³	Not applicable.
Texas	Not less than two years nor more than 10 years. ¹⁵⁴	Mandatory. ¹⁵⁵

¹⁵¹ S.D. CODIFIED LAWS § 22-6-2 (2022) (stating that the penalty for a Class 1 misdemeanor is “one year imprisonment in a county jail”). “No cellular telephone, electronic communications device, tobacco product, or any other item not provided by or authorized by the operator of the jail facility may be possessed by an inmate of a jail A violation of this section constitutes a Class 1 misdemeanor.” *Id.* § 24-11-47.1.

¹⁵² S.D. CODIFIED LAWS § 22-6-6.1 (2022) (“If a defendant is convicted of two or more offenses, regardless of when the offenses were committed or when the judgment or sentence is entered, the judgment or sentence may be that the imprisonment on any of the offenses or convictions may run concurrently or consecutively at the discretion of the court.”).

¹⁵³ TENN. CODE ANN. § 39-16-201(a)-(c) (2022) (“As used in this section, unless the context otherwise requires, ‘telecommunication device’ means any type of instrument, device, machine, or equipment that is capable of transmitting telephonic, electronic, digital, cellular or radio communications, or any part of such instrument, device, machine or equipment that is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications. ‘Telecommunication device’ shall include, but not be limited to, cellular phones, digital phones and modem equipment devices. . . . It is unlawful for any person to Knowingly and with unlawful intent possess any of the following materials while present in any penal institution where prisoners are quartered or under custodial supervision without the express written consent of the chief administrator of the institution Any telecommunication device. . . . A violation of subdivision (b)(2)(C) is a Class E felony. A first violation is punishable only by fine. A second or subsequent violation is punishable only by a fine of three thousand dollars (\$3,000).”).

¹⁵⁴ TEX. PENAL CODE ANN. § 12.34(a) (LexisNexis 2021) (“An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.”). “A person commits an offense if the person, while confined in a correctional facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices.” *Id.* § 38.11(j). “An offense under this section is a felony of the third degree.” *Id.* § 38.11(g).

¹⁵⁵ TEX. CODE CRIM. PROC. ANN. art. 42.08(b) (LexisNexis 2021) (“If a defendant is sentenced for an offense committed while the defendant was an inmate in the Texas Department of Criminal Justice and serving a sentence for an offense other than a state jail felony and the defendant has not completed the sentence he was serving at the time of the offense, the judge shall order the sentence for the subsequent offense to commence immediately on completion of the sentence for the original offense.”).

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Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
United States Virgin Islands	Not more than five years. ¹⁵⁶	Discretionary to the judge. ¹⁵⁷
Utah	Phones, in some instances, may be regarded as an “implement of escape” and therefore possession by an inmate could reasonably be regarded as a violation of UTAH CODE ANN. § 76-8-311.3(4)(c), which is a second-degree felony. ¹⁵⁸ This carries a penalty of not less than one year nor more than fifteen years. ¹⁵⁹	Mandatory, unless the sentencing court makes a specific finding that a consecutive sentence would be inappropriate. ¹⁶⁰

¹⁵⁶ V.I. CODE ANN. tit. 14, § 665(b) (2022) (“It shall be unlawful for any person to introduce, possess or deliver a mobile telephone, commercial communication devices or electronic devices which are capable of connecting to the internet, into a prison or detention facility. This shall not include mobile telephones and laptop computers that are the property of employees, contractors or employees of contractors, or volunteers, and are exclusively for the personal use of that employee, contractor or employee of a contractor, or volunteer. Anyone who violates this subsection is guilty of a felony and shall be imprisoned not more than five years.”).

¹⁵⁷ *Id.* tit. 5, § 3672(a) (“A judgment imposing a sentence of imprisonment shall specify whether the sentence is to be served concurrently with or consecutively to any other sentence imposed at the same time or prior thereto. If the sentences are to be served consecutively, the judgment shall specify when each sentence is to begin with reference to the termination of any other sentence.”).

¹⁵⁸ UTAH CODE ANN. § 76-8-311.3(4)(c) (LexisNexis 2022); 2019 DOJ OIG REPORT, *supra* note 40, at 1; *see* PARSONS ET AL., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹⁵⁹ UTAH CODE ANN. § 76-3-203(2) (LexisNexis 2022) (“A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows . . . (2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.”); *see also id.* § 76-8-311.3(4)(c) (“An offender who possesses at a correctional facility, or a detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.”); “[c]ontraband means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.” *Id.* § 76-8-311.3(1)(a).

¹⁶⁰ UTAH CODE ANN. § 76-3-401(3) (LexisNexis 2022) (“The court shall order that sentences for state offenses run consecutively if the later offense is committed while

the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.”).

2023 *PENALTIES FOR POSSESSION OF CONTRABAND* 1215

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Vermont	<p>Vermont does not have a criminal statute for possession of contraband phones by inmates and instead may punish inmates for contraband using administrative penalties. Possession of contraband phones is not explicitly listed as a Major A, Major B, or Minor violation of rules by an inmate.¹⁶¹</p> <p>Vermont punishes individuals who give prisoners instrumentalities of escape.¹⁶² Phones may reasonably be regarded as an instrument or tool to escape.¹⁶³ This is a felony punishable by not more than five years of imprisonment.¹⁶⁴</p>	Not applicable.

¹⁶¹ 13-002 VT. CODE R. § 13 130 002 (2022) (administrative penalties for discipline of inmate offenders).

¹⁶² VT. STAT. ANN. tit. 13, § 1503 (2022) (“A person who gives to a prisoner in any such place of confinement, or conveys therein, a tool, instrument, or weapon with intent to enable a prisoner to escape, whether such escape is effected or not; or who, not being a parent, child, wife, husband, brother, or sister of such prisoner, harbors, conceals, aids or comforts a prisoner who has escaped from any such place of confinement, knowing thereof, shall be punished as provided in section 1502 of this title.”).

¹⁶³ 2019 DOJ OIG REPORT, *supra* note 40, at 1; *see* M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹⁶⁴ VT. STAT. ANN. tit. 13, § 1502(b) (2022) (“A person who violates a provision of this section shall be imprisoned not more than five years or fined not more than \$500.00.”).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Virginia	<p>Phones, in some instances, may be regarded as an “instrument, tool or other thing for the purpose of escaping” and therefore possession of a contraband phone by an inmate could reasonably be regarded as a violation of VA. CODE ANN. § 53.1-203(3),¹⁶⁵ a Class six felony carrying a penalty of not more than twelve months imprisonment.¹⁶⁶</p> <p>Virginia correctional facilities also have the authority to designate policies to control contraband.¹⁶⁷</p>	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ¹⁶⁸

¹⁶⁵ VA. CODE ANN. § 53.1-203(3) (2022); 2019 DOJ OIG REPORT, *supra* note 40, at 1; *see* M.N. Parsons et al., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

¹⁶⁶ VA. CODE ANN. § 53.1-203(3) (2022) (“It shall be unlawful for a prisoner in a state, local or community correctional facility or in the custody of an employee thereof to: . . . [m]ake, procure, secrete or have in his possession any instrument, tool or other thing for the purpose of escaping from or aiding another to escape from a correctional facility or employee thereof.”). “For violation of any of the provisions of this section, except subdivision 6, the prisoner shall be guilty of a Class 6 felony.” *Id.* §§ 53.1-203, 18.2-10(f) (“For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.”).

¹⁶⁷ 6 VA. ADMIN. CODE § 15-40-920 (2022) (“The facility shall have a policy regarding the control of contraband. The policy shall be available to inmates via the inmate handbook or orientation.”).

¹⁶⁸ *See* VA. CODE ANN. § 19.2-308 (2022) (“When any person is convicted of two or more offenses, and sentenced to confinement, such sentences shall not run concurrently, unless expressly ordered by the court.”).

2023 *PENALTIES FOR POSSESSION OF CONTRABAND* 1217

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
Washington	Not more than five years. ¹⁶⁹	Mandatory. ¹⁷⁰

¹⁶⁹ WASH. REV. CODE ANN. § 9A.20.021(1)(c) (LexisNexis 2022) (“For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such confinement and fine.”). “Every person serving a sentence in any state correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or carries upon his or her person . . . a cell phone or other form of an electronic telecommunications device, is guilty of a class C felony. . . . Every person confined in a county or local correctional institution who, without legal authorization, while in the institution or while being conveyed to or from the institution, or while under the custody or supervision of institution officials, officers, or employees, or while on any premises subject to the control of the institution, knowingly possesses or has under his or her control . . . a cell phone or other form of an electronic telecommunications device, is guilty of a class C felony.” *Id.* § 9.94.041(1)-(2).

¹⁷⁰ *See* WASH. REV. CODE ANN § 9.94.041(3) (LexisNexis 2022) (“The sentence imposed under this section shall be in addition to any sentence being served.”).

Jurisdiction	Maximum Term of Imprisonment	Consecutive Term of Imprisonment
West Virginia	Not less than one year nor more than five years, unless the court exercises discretion for less. ¹⁷¹	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ¹⁷²
Wisconsin	Not more than three years and six months. ¹⁷³	Discretionary to the judge. ¹⁷⁴

¹⁷¹ W. VA. CODE ANN. § 61-5-8(g)-(h) (LexisNexis 2022) (“An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any . . . telecommunications device . . . is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or confined in a state correctional facility not less than one year nor more than five years, or both, or, in the discretion of the court, be confined in jail not more than one year and fined not more than \$500. . . . Telecommunication device means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications regardless of whether the part itself is able to transmit. The term includes, but is not limited to, cellular phones, digital phones and modem equipment devices.”).

¹⁷² *Id.* § 61-11-21 (“When any person is convicted of two or more offenses, before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement, unless, in the discretion of the trial court, the second or any subsequent conviction is ordered by the court to run concurrently with the first term of imprisonment imposed.”).

¹⁷³ WIS. STAT. ANN. § 302.095(2)(b) (LexisNexis, 2022) (“Any person who, 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 the warden or superintendent of the prison, in the case of a prison, has in his or her possession with intent to retain for himself or herself any article or thing whatever, is guilty of a Class I felony.”); *id.* § 939.50(3)(i) (“For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.”).

¹⁷⁴ *Id.* § 973.15(2)(a) (“Except as provided in par. (b), the court may impose as many sentences as there are convictions and may provide that any such sentence be

Wyoming	Not more than one year. ¹⁷⁵	Discretionary to the judge, but the term of imprisonment for the new offense will run consecutively unless explicitly directed otherwise at sentencing. ¹⁷⁶
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C. Jurisdictional Trends for Punishing Inmates in Possession of Contraband Phones

Analyzing the data provided in Parts II.A and II.B of this article, it is clear that the federal statute punishing possession of a contraband phone by an inmate is not aligned with national trends in the surveyed jurisdictions for comparable offenses.¹⁷⁷ As discussed in Part II.A, federal law punishes possession of a contraband phone by inmates as a Class A misdemeanor with a maximum penalty of one year of imprisonment, which must run consecutive to any other term of

concurrent with or consecutive to any other sentence imposed at the same time or previously.”).

¹⁷⁵ WYO. STAT. ANN. § 6-5-213(a)-(c) (2022) (“Except as authorized by a person in charge, no person shall . . . [i]ntentionally make, obtain or possess contraband if the person is officially confined in a penal institution or correctional facility Any person who violates any provision of subsection (a) of this section is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than two thousand dollars (\$2,000.00), or both. . . . ‘Contraband’ means . . . [c]ellular telephone or other unauthorized electronic communications device . . .”).

¹⁷⁶ *Mitchell v. State*, 2018 WY 110, ¶ 37, 426 P.3d 830, 841 (Wyo. 2018) (“‘In the criminal context, a sentencing court ‘has discretion in determining whether [multiple] sentences will be served consecutively or concurrently’ ‘If no specification is made as to whether multiple sentences are concurrent or whether they are consecutive, the sentences will be deemed to be consecutive whether they are imposed in the same case, in different cases, or by different courts.’”) (first quoting *Merch. v. State Dep’t of Corr.*, 2007 WY 159, ¶ 13, 168 P.3d 856, 862 (Wyo. 2007); then quoting *Pearson v. State*, 866 P.2d 1297, 1299 (Wyo. 1994); then citing *Bird v. State*, 2015 WY 108, ¶ 11, 356 P.3d 264, 268 (Wyo. 2015)).

¹⁷⁷ *See supra* Parts II.A, II.B.

imprisonment previously imposed on the inmate-offender.¹⁷⁸ An analysis of the data contained in Part II.B demonstrates that the federal penalty is significantly lower than the average penalties from the fifty-six surveyed jurisdictions across the United States and its territories.¹⁷⁹

The average term of imprisonment across the fifty-six surveyed non-federal jurisdictions was approximately four years and six months for the same or comparable offenses, a 450% increase over the statutory maximum term of imprisonment at the federal level.¹⁸⁰ After removing the eleven jurisdictions that decline to punish an inmate-offender for possession of a contraband phone by using statutory criminal penalties,¹⁸¹ the average increases to approximately five years and six months—a 550% increase compared to the federal statutory maximum.¹⁸² The highest penalty across the surveyed jurisdictions is in Arkansas, which permits a statutory term of imprisonment of not less than five years and not more than twenty years for possession of a cellular telephone by an inmate, which is 2000% higher than the federal penalty.¹⁸³

Among the surveyed States and territories, only eight jurisdictions follow the federal statutory maximum penalty of one year of imprisonment.¹⁸⁴ While eleven out of fifty-six jurisdictions have no

¹⁷⁸ 18 U.S.C. § 1791; *see supra* Part II.A.

¹⁷⁹ *See supra* Part II.B.

¹⁸⁰ The median statutory maximum of punishment across the fifty-six surveyed jurisdictions was five years of imprisonment exactly. *See supra* Part II.B; Lisa Charlotte Muth, *What the Difference Between Mean and Median Tells us About Income Inequality*, DATAWRAPPER (Jan. 11, 2018), <https://blog.datawrapper.de/weekly-chart-income/> (“In general, means take outliers into account, medians don’t.”). While the mean, cited in the body of the paragraph, accounts for outliers in the data, the median does not. Describing the dataset in Part II.B is not so large that the mean becomes diluted by outliers in the data. Nonetheless, as a point of comparison, the median among the surveyed jurisdictions is slightly higher than the mean, at 500% of the federal statutory maximum. *See supra* Part II.B.

¹⁸¹ Eleven of the fifty-six jurisdictions surveyed do not criminalize possession of a contraband phone by an inmate as its own crime: American Samoa, California, Massachusetts, Minnesota, Montana, New Mexico, the Commonwealth of the Northern Mariana Islands, Ohio, the Commonwealth of Puerto Rico, Tennessee, and Vermont. *See supra* Part II.B.

¹⁸² The median for the same set of data is five years of imprisonment, a 500% increase over the federal statutory maximum. *See supra* Part II.B.

¹⁸³ *See supra* text accompanying note 63.

¹⁸⁴ Eight jurisdictions that have a statutory maximum of one year of imprisonment are Alaska, Connecticut, Indiana, Missouri, Nebraska, South Dakota, Virginia, and Wyoming. *See supra* Part II.B.

statute criminally punishing possession of a contraband phone by an inmate,¹⁸⁵ thirty-seven out of fifty-six jurisdictions have statutory maximums for such an offense that are greater than one year.¹⁸⁶ This category accounts for 82.2% of the forty-five jurisdictions that criminally punish possession of a contraband cell phone by an inmate or similar offenses, meaning that vast majority of surveyed jurisdictions exceed the federal statutory maximum for comparable offenses. The most common statutory maximum term of imprisonment among the surveyed jurisdictions is five years, with seventeen jurisdictions utilizing this standard as their statutory maximum.¹⁸⁷

Not only is the average maximum penalty substantially higher in the surveyed jurisdictions, but a significant number of jurisdictions also enforce mandatory minimum terms of imprisonment. Among those surveyed, sixteen jurisdictions impose mandatory minimums for comparable offenses, accounting for about one-third of the jurisdictions in the data population.¹⁸⁸ Among those jurisdictions enforcing mandatory minimum sentences, the average term of mandatory

¹⁸⁵ See *supra* text accompanying note 179.

¹⁸⁶ The thirty-seven jurisdictions that have a statutory maximum term of imprisonment greater than one year are: Colorado (one and a half years); Arizona (two years); the District of Columbia (two years); Oklahoma (two years); North Carolina (25 months); Delaware (three years); Wisconsin (three and a half years); Nevada (four years); Florida (five years); Georgia (five years); Hawaii (five years); Idaho (five years); Iowa (five years); Kentucky (five years); Maine (five years); Maryland (five years); Michigan (five years); New Jersey (five years); North Dakota (five years); Oregon (five years); Pennsylvania (five years); Rhode Island (five years); the United States Virgin Islands (five years); Washington (five years); West Virginia (five years); New Hampshire (seven years); New York (seven years); Alabama (10 years); Guam (10 years); Louisiana (10 years); South Carolina (10 years); Texas (10 years); Kansas (136 months); Illinois (15 years); Mississippi (15 years); Utah (15 years); and Arkansas (20 years). See *supra* Part II.B.

¹⁸⁷ Seventeen jurisdictions have a five-year statutory maximum for possession of contraband phone by an inmate or a comparable crime: Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Michigan, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, the United States Virgin Islands, Washington, and West Virginia. See *supra* Part II.B.

¹⁸⁸ The sixteen jurisdictions that have a statutory mandatory minimum term of imprisonment: Arizona (0.75 years); Alabama (one year); Colorado (one year); Georgia (one year); Kentucky (one year); Nevada (one year); South Carolina (one year); Utah (one year); West Virginia (one year); Texas (two years); Kansas (31 months); Guam (three years); Mississippi (three years); New Jersey (three years); Illinois (four years); and Arkansas (five years). See *supra* Part II.B.

minimum imprisonment is approximately two years, while the median term of mandatory minimum imprisonment is one year.¹⁸⁹

Curiously, despite the overall heavier-handed approach to punishing comparable offenses in the surveyed jurisdictions, only fifteen of the surveyed jurisdictions follow the federal model by mandating consecutive terms of imprisonment for conviction of contraband phone offenses.¹⁹⁰ Among these jurisdictions, six of the fifteen utilize both a mandatory minimum sentence and mandatory consecutive imprisonment.¹⁹¹ Within this limited category of mandatory minimum/mandatory consecutive jurisdictions, Illinois has the most stringent penalties, with mandatory consecutive sentencing,¹⁹² a mandatory minimum of four years,¹⁹³ and a maximum statutory penalty of fifteen years.¹⁹⁴

As demonstrated by this analysis, the federal penalty for possession of a contraband phone by an inmate is significantly lower than the penalties for comparable crimes in the surveyed jurisdictions under almost every metric. To better align the federal penalty with national standards and to provide federal sentencing judges with greater discretion to impose deterrent sentences on inmate-offenders, the federal law must be amended.

III. A PROPOSAL FOR INCREASING THE FEDERAL PENALTY TO FIVE YEARS

Federal law already recognizes the danger presented by contraband phones in federal prisons, as demonstrated by the fact that 18 U.S.C. § 1791 explicitly identifies the possession of contraband phones by inmate-offenders as criminal behavior.¹⁹⁵ However, the categorization of the offense as a Class A misdemeanor with a maximum one-year term of imprisonment does not properly account for the serious harm that an inmate may cause when in possession of a contraband

¹⁸⁹ See *supra* Part II.B.

¹⁹⁰ The fifteen jurisdictions that mandate consecutive sentences: Alaska, Arizona, D.C., Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Nevada, Oregon, Texas, Utah, and Washington. See *supra* Part II.B.

¹⁹¹ Six jurisdictions that have mandatory minimum sentences and mandatory consecutive terms of imprisonment: Arizona, Illinois, Kansas, Nevada, Texas, and Utah. See *supra* Part II.B.

¹⁹² See *supra* text accompanying note 86.

¹⁹³ See *supra* text accompanying note 85.

¹⁹⁴ See *id.*

¹⁹⁵ 18 U.S.C. §§ 1791(a)(2), (b)(4), (d)(1)(F).

phone. The inadequacy of the federal law is underscored in its juxtaposition with the data collected in Part II of this article, highlighting the serious discrepancy between the federal punishment for inmate-offenders who possess contraband phones versus the national trends for punishment of comparable offenses.

To correct this disparity, lawmakers should adjust the federal penalty for this offense to better align with national trends by increasing the statutory maximum penalty from one year of imprisonment to a new statutory maximum of five years. This Part justifies this increase in the statutory maximum in two primary ways. First, a five-year statutory maximum aligns the federal penalty with national trends for comparable offenses. Second, recent recidivism studies of federal inmates by the United States Sentencing Commission suggest that sentences in excess of 36 months actually nullify the criminogenic impact of shorter sentences and produce a statistically observable deterrent effect for federal inmates.¹⁹⁶ This deterrent effect increases as the term of incarceration becomes longer, creating a statistically appreciable deterrent effect beginning at 60 months—or five years—of imprisonment.

A. A Five-Year Statutory Maximum Aligns the Federal Penalty with National Trends for Comparable Offenses

As discussed in Part II.C, the average statutory maximum term of imprisonment across the surveyed jurisdictions is approximately 4.5 years of imprisonment for the same or comparable offenses, and approximately 5.5 years of imprisonment once the eleven jurisdictions are removed that decline to punish an inmate for possession of a contraband phone.¹⁹⁷ The median statutory maximum across both sets of data is five years.¹⁹⁸ By increasing the federal statutory maximum to a term of five years, the federal penalty would be brought into alignment with national trends.

¹⁹⁶ See *infra* Part III.B.

¹⁹⁷ See *generally, supra* Part II.C.

¹⁹⁸ See *supra* note 178 (providing that the median statutory maximum term of imprisonment of all surveyed jurisdictions is five years); see also *supra* note 180 (providing that the median statutory maximum term of imprisonment of 45 surveyed jurisdictions that criminalize possession of a contraband phone by an inmate is five (5) years).

Such an increase is consistent with the principles of sentencing described by the United States Sentencing Commission. According to the Policy Statement to the Sentencing Commission's 2021 Guidelines Manual, "Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders."¹⁹⁹ Additionally, "Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity."²⁰⁰ A five year statutory maximum accounts for and addresses both of these objectives. First, an increase to the federal statutory maximum creates uniformity in sentencing, not only across federal offenders but across offenders nationwide at different jurisdictional levels. This brings consistency to criminal enforcement practices. Second, a broader sentencing range (*i.e.*, zero to five years, instead of zero to one year) allows sentencing judges greater opportunities to differentiate between dissimilar fact patterns falling within the scope of the same criminal statute. This permits the court greater latitude to increase the sentence in correlation with the magnitude of harm presented.

Consistent with the principle of uniformity in sentencing, increasing the statutory maximum to five years also makes the federal contraband statute itself more internally consistent by yielding identical statutory maximums for possession of comparable categories of contraband. 18 U.S.C. §§ 1791(a)(2), (b)(3), and (d)(1)(B) punish federal inmates for possessing "an object that is designed or intended to be used . . . to facilitate escape from a prison" with a five-year statutory maximum term of imprisonment.²⁰¹ As previously discussed, the DOJ OIG has already identified that "[a]n inmate with a cell phone can . . . coordinat[e] escape attempts."²⁰² Given the high degree of overlap between possession of a contraband phone and possession of an instrumentality of escape, it is reasonable that the two crimes would be subject to the same statutory maximum punishment.

This change could easily be accomplished by amending 18 U.S.C. § 1791(b)(3), changing the language to read "imprisonment for not more than 5 years, or both, if the object is specified in subsection (d)(1)(B) or (d)(1)(F) of this section," while simultaneously removing

¹⁹⁹ U.S. SENT'G GUIDELINES MANUAL, *supra* note 47, at 3.

²⁰⁰ *Id.*

²⁰¹ 18 U.S.C. §§ 1791(a)(2), (b)(3), (d)(1)(B).

²⁰² 2019 DOJ OIG REPORT, *supra* note 40, at 1; *see also* PARSONS ET AL., *supra* note 40, at 2; 2016 DOJ OIG REPORT, *supra* note 40, at i.

the (d)(1)(F) language from 18 U.S.C. § 1791(b)(4).²⁰³ Alternatively, 18 U.S.C. § 1791(d)(1)(B) could be amended to read:

The term ‘prohibited objective’ means—(B) marijuana or a controlled substance in schedule III, other than a controlled substance referred to in subparagraph (C) of this subsection, ammunition, a weapon (other than a firearm or destructive device), or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison, including but not limited to a phone or other device used by a user of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))) in connection with such service.

This change would acknowledge the fact that contraband phones are instrumentalities of escape and would permit lawmakers to remove 18 U.S.C. § (d)(1)(F) entirely.

While the federal statutory maximum for possession of a contraband phone should be increased to five years, the federal code should maintain its current requirement for the sentence to run concurrent with any other sentence previously imposed. Among the surveyed jurisdictions that have criminal penalties for comparable offenses, fifteen out of forty-five jurisdictions, or one-third, include mandatory consecutive sentencing for comparable offenses.²⁰⁴ However, in the thirty surveyed jurisdictions that do not require consecutive sentencing, there are other statutory mechanisms that increase the punitive effect of the offense. For example, ten out of the remaining thirty jurisdictions also include mandatory minimum sentences,²⁰⁵ with five of those jurisdictions enforcing mandatory minimums despite statutory

²⁰³ 18 U.S.C. § 1791(d)(1)(F) defines the term “prohibited object” to include “a phone or other device used by a user of commercial mobile service . . . in connection with such service.”

²⁰⁴ The jurisdictions that have mandatory consecutive sentencing for comparable offenses are Alaska, Arizona, the District of Columbia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Nevada, Oregon, Texas, Utah, and Washington. *See supra* Part II.B.

²⁰⁵ Among the thirty surveyed jurisdictions that punish possession of contraband phones by inmates or comparable offenses and do not have mandatory consecutive sentences, the following jurisdictions have mandatory minimums: Alabama (one year); Colorado (one year); Georgia (one year); Kentucky (one year); South Carolina (one year); West Virginia (one year); Guam (three years); Mississippi (three years); New Jersey (three years); and Arkansas (five years). *See supra* Part II.B.

maximums of five years of imprisonment or less.²⁰⁶ Seven out of the thirty jurisdictions include statutory maximum penalties greater than five years.²⁰⁷ A mandatory consecutive term of imprisonment in federal sentencing is an appropriate alternative to increasing the statutory maximum above the jurisdictional average while still emphasizing the gravity of the offense.

While sixteen of the forty-five surveyed jurisdictions that punish possession of a contraband phone by an inmate or a comparable offense also include a mandatory minimum sentence,²⁰⁸ the federal penalty should not be amended to add a mandatory minimum. Only six of the surveyed jurisdictions enforce both a mandatory minimum sentence and mandatory consecutive sentencing, suggesting that the overwhelming majority of legislators across the nation have found that combination of penalties to be unduly punitive.²⁰⁹ Additionally, some judges have expressed dissatisfaction with mandatory minimums because their enforcement decreases the ability of a sentencing court to adjudicate a sentence that fits the particular circumstances of a case.²¹⁰

²⁰⁶ Among the thirty surveyed jurisdictions that punish possession of contraband phones by inmates or comparable offenses and do not have mandatory consecutive sentences, the following jurisdictions have mandatory minimums and a statutory maximum of five years or less: Colorado (one year minimum, 1.5 year maximum); Georgia (one year minimum, five year maximum); Kentucky (one year minimum, five year maximum); West Virginia (one year minimum, five year maximum); and New Jersey (three year minimum, five year maximum). *See supra* Part II.B.

²⁰⁷ Among the thirty surveyed jurisdictions that punish possession of contraband phones or comparable offenses and do not have mandatory consecutive sentences, the following jurisdictions have statutory maximums greater than five years: New Hampshire (seven years); New York (seven years); Alabama (ten years); Guam (ten years) South Carolina (ten years); Mississippi (ten years); Arkansas (twenty years). *See supra* Part II.B.

²⁰⁸ *See supra* Part II.B.

²⁰⁹ Among the forty-five surveyed jurisdictions that punish possession of contraband phones by inmates or comparable offenses, the only jurisdictions that have both mandatory consecutive sentencing and mandatory minimum punishments are Arizona, Illinois, Kansas, Nevada, Texas, and Utah. *See supra* Part II.B.

²¹⁰ *See* Patti B. Saris, *So Much Accomplished, So Much Left to Do: A Retrospective on Six Years as Chair of the United States Sentencing Commission*, 87 UMKC L. REV. 145, 157 (2018) (“Moreover, overly harsh mandatory minimums undermine the very purpose of the Sentencing Guidelines that were designed to ensure proportional sentencing as determined by judges and not the prosecutors who decide whether to charge the mandatory minimums or not.”); *see also* Erik Luna & Paul G. Cassell, *Mandatory Minimalism*, 32 CARDOZO L. REV. 1, 1 (2010) (“A mandatory minimum deprives judges of the flexibility to tailor punishment to the particular facts of the case and can result in an unduly harsh sentence. In the past, it was perhaps

As discussed in Part I, if one of the key purposes of punishment is to be “geared primarily to the gravity of the offense, yet broad enough in latitude to accommodate the characteristics of individual offenders,”²¹¹ adding a mandatory minimum to an offense with a five year statutory maximum penalty curtails the latitude of the sentencing court to craft a punishment around the unique facets of the case.

B. Recent Recidivism Studies Support Increasing the Federal Statutory Maximum to Five Years

In addition to the fact that a five-year statutory maximum would bring the federal statute into alignment with the majority of jurisdictions across the nation, there is data supporting the argument that recidivism rates among federal offenders begin to decrease at sixty months of imprisonment, suggesting that there is actually a beneficial deterrent effect to increasing the statutory maximum for the offense. “Recidivism ‘refers to a person’s relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.’”²¹² In the federal offender population, data on the subject has been limited, but two recent studies have been instructive. “The first study, Rhodes et al. (2018) found that longer prison terms modestly reduce recidivism. Specifically, the likelihood of recidivism was reduced by approximately one percent for every 7.5-month increase in sentence length.”²¹³ The second study, conducted by the United States Sentencing Commission in 2020, “found that federal offenders receiving sentences of more than 60 months incarceration had lower odds of recidivism when compared to similar offenders receiving shorter sentences.”²¹⁴ The 2020 report noted that there was not “any statistically significant relationship between length of

unsurprising to find federal judges—including Justices Stephen Breyer and Anthony Kennedy, and the late Chief Justice William Rehnquist—voicing dismay at the excessive sentences they were required to pronounce and affirm.”)

²¹¹ 1 JENS DAVID OHLIN, *WHARTON’S CRIMINAL LAW* § 1:1 (16th ed. 2021).

²¹² U.S. SENT’G COMM’N, *LENGTH OF INCARCERATION AND RECIDIVISM* 1, 6 (2022) (citations omitted), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220621Recidivism-SentLength.pdf> [hereinafter 2022 Recidivism Incarceration Report].

²¹³ *Id.* at 3 (citing William Rhodes et al., *Relationship Between Prison Length of Stay and Recidivism: A Study Using Regression Discontinuity and Instrumental Variables with Multiple Break Points*, 17 *CRIMINOLOGY & PUB. POL’Y* 731, 758 (2018)).

²¹⁴ *Id.* (citing RYAN COTTER, U.S. SENT’G COMM’N, *LENGTH OF INCARCERATION AND RECIDIVISM* 1, 30 (2020) [hereinafter 2020 Recidivism Incarceration Report]).

incarceration and recidivism for offenders incarcerated for less than 60 months.”²¹⁵

Additionally, in a June 2022 study released by the United States Sentencing Commission, researchers found that “the odds of recidivism were lower for federal offenders sentenced to more than 60 months incarceration compared to a matched group of offenders receiving shorter sentences”—a result which was “almost identical to the findings established in prior Commission research.”²¹⁶ The 2022 study, which examined 32,135 federal offenders,²¹⁷ determined that “[t]he odds of recidivism were approximately 18 percent lower for offenders sentenced to more than 60 months up to 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.”²¹⁸

While there is a sharper decline in recidivism beginning around sixty months, the Sentencing Commission’s 2020 and 2022 studies, in comparison to each other, raise a valuable point about incarceration’s impact on decreasing recidivism even before the sixty-month threshold. Both studies show that a sentence of twenty-four months of imprisonment up to thirty-six months actually has a criminogenic effect, increasing the likelihood of recidivism.²¹⁹ However, once the term of incarceration exceeds thirty-six months, incarceration actually has a preventative effect, decreasing the likelihood of recidivism.²²⁰ Therefore, the possibility of adding up to five additional years of incarceration for a violation, in addition to the earlier sentence the inmate-offender is already serving for their underlying offense, has a statistically-demonstrated likelihood of decreasing recidivism.

²¹⁵ *Id.*

²¹⁶ *Id.* at 4.

²¹⁷ *Id.* at 5.

²¹⁸ *Id.* at 4.

²¹⁹ See 2022 Recidivism Incarceration Report, *supra* note 212, at 3 (stating that when “the length of incarceration increases the likelihood of recidivism increases,” then incarceration is criminogenic). Two independent studies, released in 2010 and 2005, surveyed cohorts of federal inmates. *Id.* at 23-24 fig.5. Both surveys concluded that twenty-four to thirty-six months of incarceration produces a criminogenic effect on inmates. *Id.*

²²⁰ See 2022 Recidivism Incarceration Report, *supra* note 212 (showing that from thirty-six months of imprisonment up to forty-eight months, incarceration has a preventative effect in separate studies surveying cohorts of federal inmates respectively released in 2010 and 2005).

IV. CONCLUSION

In a 2016 report, the DOJ OIG analyzed data received during a formal review of the BOP's contraband interdiction efforts.²²¹ The report highlighted that, “[a]ccording to BOP data, cell phones were the most common type of contraband recovered from fiscal years (FY) 2012 through 2014.”²²² Shockingly, “[t]he BOP reports that over 8,700 cell phones were recovered during this period, 2,012 more than the next most common contraband type, weapons.”²²³ The United States Government Accountability Office “reported that in the 3 years prior to FY 2011, cell phones recovered in BOP institutions increased, from 1,774 in FY 2008 to 3,684 in FY 2010.”²²⁴ While the number declined slightly between Fiscal Years 2012 and 2014, “cell phones have remained . . . one of the most prevalent dangerous contraband items the BOP recovers, according to BOP data.”²²⁵ Three years later, in 2019, the DOJ OIG emphasized the continuing danger of contraband phones, reporting “[t]he OIG is particularly concerned about the challenges to safety and security [in the BOP] posed by contraband cell phones.”²²⁶

Aggressive action needs to be taken by lawmakers to address the crisis of contraband phones in BOP facilities. While leaders debate and explore the efficacy, cost, and legality of detection and disabling technologies for reducing contraband phones in facilities,²²⁷ more and

²²¹ See 2016 DOJ OIG REPORT, *supra* note 40, at i.

²²² *Id.* at i.

²²³ *Id.*

²²⁴ *Id.* at 5 (footnote omitted).

²²⁵ *Id.* at 6.

²²⁶ 2019 DOJ OIG REPORT, *supra* note 40, at 1; see also Walter Pavlo, *Will Cell Phones Be The Downfall Of Prisons?*, FORBES (Apr. 19, 2020), <https://www.forbes.com/sites/walterpavlo/2020/04/19/will-cell-phones-be-the-downfall-of-prisons/?sh=16c2a7781be4> (“The cell phone contraband problem in prisons was listed as one of the top challenges for the BOP in a U.S. Department of Justice Office of Inspector General report last October.”).

²²⁷ See Walter Pavlo, *Former Inmate Claims Federal Bureau Of Prisons Was Running A ‘Fast And Furious’ Operation At FCI Miami*, FORBES (Nov. 17, 2021), <https://www.forbes.com/sites/walterpavlo/2021/11/17/former-inmate-claims-federal-bureau-of-prisons-was-running-a-fast-and-furious-operation-at-fci-miami/?sh=6a43b3e3476c> (“In 2019, Senator Tom Cotton (R-Ark.), and Senator Lindsey Graham (R-S.C.), introduced legislation to prevent contraband cellphone use in federal and state prison facilities by allowing state and federal prisons to use cell phone jamming systems. The bill never passed and was criticized by the Federal Communications Commission (FCC), which stated, ‘Cell phone jamming doesn’t

more contraband phones are being smuggled into the jails as the lucrative market for such items continues to thrive.²²⁸

While these discussions continue, lawmakers should take immediate action to increase the federal penalty for possession of contraband cell phones by federal inmate-offenders. Congress should raise the statutory maximum to five years of imprisonment while maintaining the existing statutory requirement that the new term of imprisonment be run consecutive to any prior term of imprisonment. This change aligns the federal statute with the national average for comparable offenses and accomplishes the dual objectives of just punishment and deterrence. Additionally, this new enforcement strategy has a greater likelihood of decreasing recidivism compared to the current law. Strict enforcement of a new, higher federal standard accomplishes the purposes of criminal law and creates a realistic possibility of reducing the number of contraband phones in federal prisons.

just block inmate calls—it can also interfere with mobile 9-1-1 calls and public safety communication.”); *see generally* M.N. Parsons et al., *supra* note 40 (discussing contraband phone detection and disabling strategies); *Contraband Wireless Devices*, FED. COMM’N COMM’N (May 3, 2022), <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/contraband-wireless-devices> (“The federal government and various states have been using and investing in technologies known generally as Contraband Interdiction Systems (CIS) to combat contraband wireless device use in correctional facilities.”); Press Release, Bureau of Prisons Tests Micro-Jamming Technology in South Carolina Prison to Prevent Contraband Cell Phones, U.S. DEP’T OF JUST. (Apr. 12, 2019) (“Currently only federal agencies can obtain authorization to jam the public airwaves. State and local prisons cannot. This week’s test was a novel collaborative operation between BOP and the South Carolina Department of Corrections allowing the testing of micro-jamming technology at a state prison.”).

²²⁸ *Drugs, 1,046 Cellphones Seized at Fort Dix Federal Prison*, TRENTONIAN, <https://www.trentonian.com/2018/01/30/drugs-1046-cellphones-seized-at-fort-dix-federal-prison> (Aug. 19, 2021, 1:36 AM) (stating that an anonymous source, “most likely a corrections officer,” wrote that contraband phones sell for more than \$1,000 per phone and are a “hot commodity” in the federal prison at Fort Dix, New Jersey).