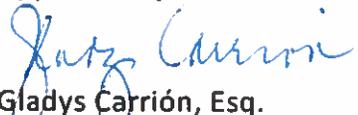


Detecting Cell Phones and Other Wireless and Electronic Devices in Secure Detention

<p>Approved By:  Gladys Carrión, Esq. Commissioner</p>	<p>Date Issued: <u>6/2/2016</u></p>	<p>Number of Pages: 5</p>	<p>Number of Attachments: 0</p>
<p>Related Laws: NY CLS Penal § 205.00(4); NY CLS Penal § 205.25</p>	<p>ACS Divisions/Provider Agencies: Youth and Family Justice</p>	<p>Contact Office /Unit: Stephanie Prussack Associate Commissioner Detention Services stephanie.prussack@acs.nyc.gov</p>	
<p>Supporting Regulations: 9 NYCRR § 180.7</p>	<p>Supporting Case Law: <i>People v. Finley</i>, 10 N.Y.3d 647 (N.Y. 2008) <i>People v. Green</i>, 119 A.D.3d 23 (N.Y. App. Div. 3d Dep't 2014)</p>	<p>Bulletins & Directives: NA</p>	
<p>Key Words: Cell phone, mobile phone, wireless, electronic, contraband, device, secure detention</p>	<p>Related Policies: ACS Operational Directive #2013/02: Staff and Visitor Entry into Secure Detention Facilities and Inspection of Packages; DJJ Directive #11.1: Personal Resident Searches; DJJ Operations Order #02/09: Contraband Management for Secure and Non-Secure Detention; DJJ Operations Order #04/05: The Agency's Revised Behavior Management Program.</p>	<p>Supersedes: NA</p>	
<p>Related Forms: NA</p>			
<p>SUMMARY: It is the policy of the New York City Administration for Children's Services (ACS) to promote the safety of youth and staff in detention facilities. Cell phones and other wireless devices are considered dangerous contraband, and as such, are prohibited from all secure detention facilities. This policy describes the procedures that staff must take to detect and confiscate cell phones or other wireless devices in a secure detention facility.</p>			
<p>SCOPE: This policy applies to all secure detention facilities operated by or for ACS and applies to secure detention staff, ACS employees, youth in secure detention facilities, and visitors.</p>			

I. Purpose

The following policy is to be implemented in secure detention facilities operated by the Administration for Children's Services (ACS). The purpose of this policy is to stop the introduction and use of contraband, namely cell phones and other wireless equipment, in secure detention facilities.

II. Policy

Non-agency issued cell phones and/or other wireless devices are not permitted inside secure detention facilities, vehicles, and/or detention rooms at the courts. Cell phones and other wireless devices are considered dangerous contraband within a detention environment.¹ Under Section 205.25(1) of the NYS Penal Law, a person is guilty of promoting prison contraband in the first degree when he knowingly and unlawfully introduces any dangerous contraband into a detention facility. Promoting prison contraband in the first degree is a class D felony. ACS shall make every effort to prohibit the introduction of cell phones and other wireless equipment through the use of cellular detecting equipment and other methods of detection.

III. Definitions

- A. Cell Phone: A portable telephone that uses wireless technology to send and receive phone signals. Most modern mobile phones also support a wide variety of other services such as text messaging, email, Internet access, and photography.
- B. Contraband: Any item, the possession of which is illegal, prohibited, or restricted pursuant to agency policy, rule, or facility order. Any item in the possession of a youth that is not issued to a youth through commissary or that is in the possession of a youth and not listed on the permissible item list. This includes any item prohibited under any law applicable to the general public and for which the possessor is liable to prosecution.
- C. Dangerous Contraband: Contraband that is capable of being used as an escape tool and/or of endangering and/or disrupting the safety and security of a detention facility or any person therein. This includes all electronic devices that utilize software applications that provide access to the Internet and/or utilize wireless communications, including data and image storage technology. Dangerous contraband is also any intoxicant, dangerous drug, controlled substance, and items prohibited by ACS' rules.

¹ See NY CLS Penal § 205.00(4); see *People v. Finley*, 10 N.Y.3d 647 (N.Y. 2008); see *People v. Green*, 119 A.D.3d 23 (N.Y. App. Div. 3d Dep't 2014).

- D. Wireless Device: Any communications equipment that can pass data to another device without a physical wire. Most wireless devices transmit signals and messages by electromagnetic waves.

IV. Procedure

A. Use of Cellular Detecting Equipment

1. Cell phone detectors shall be used by supervisory and managerial staff randomly throughout the day to make sure that unauthorized wireless equipment has not been introduced into the detention environment.
2. Areas in which cell phone detectors may be temporarily stationed include, but are not limited to the following:
 - a. Post 1 in the lobby;
 - b. Visiting areas;
 - c. Roll calls;
 - d. Dining rooms;
 - e. School; and
 - f. Recreation areas.
3. Pocket cell phone detectors shall be used by supervisory and managerial staff throughout the facility or when visiting detention rooms to detect the use of cell phones or other wireless devices.
4. Different supervisors and managers may be assigned to carry and use the cell phone detectors at different times throughout the day, including while making Tours of Inspection.
5. Tour managers or their designees shall decide who shall carry the cell phone detectors on each tour and where stationary cell phone detectors shall be placed.

B. Cameras, Videotape, and Observation

Managers may use cameras and videotape to ascertain whether any unauthorized cell phones or other wireless devices are being used inside a facility. Upon observing an unauthorized cell phone or other wireless device within a secure detention facility, managers and supervisors shall take appropriate action as described below.

C. Detection and Confiscation of Cell Phones

1. Youth

- a. Upon detecting the presence of a cell phone or other wireless device in an unauthorized area,² the supervisor shall order the search of all youth and the area until the device is found. The search of youth shall commence with youth who are nearest to the device's suspected location.³ Youth shall be given the opportunity to voluntarily provide the cell phone or other wireless device before any search commences.
- b. The wireless device shall be confiscated and vouchered in the same manner as any other contraband.⁴
- c. Facility management shall determine what disciplinary measures shall be taken against the youth.⁵

2. Visitors

- a. Any visitor caught passing a cell phone or other wireless device to a youth shall have his/her visit immediately suspended, and staff shall confiscate the cellular device and voucher it in the same manner as any other contraband.
- b. The visitor shall be subject to a suspension of his/her visits for a period to be determined by the executive director of the detention site.⁶

3. Staff

- a. Upon detecting the presence of a cell phone or other wireless device on a staff member after passing inspection at Post 1, the supervisor shall request that the staff member give him/her the device. Failure to do so shall be grounds for an immediate 15-day suspension.
- b. The supervisor shall voucher the cell phone or other wireless device and turn the device over to the manager on duty.
- c. Staff found with cell phones or other wireless devices inside the facility shall be subject to disciplinary action.

² For staff who did not detect the presence of a cell phone or other electronic device using detection equipment, but who have a reasonable suspicion that a youth has a cell phone, see Department of Juvenile Justice Directive #11.1: *Personal Resident Searches*.

³ The search shall be in accordance with Department of Juvenile Justice Directive #11.1: *Personal Resident Searches*.

⁴ See Department of Juvenile Justice Operations Order #02/09: *Contraband Management for Secure and Non-Secure Detention*.

⁵ Youth shall be disciplined according to the behavior management system. See Department of Juvenile Justice Operations Order #04/05 *The Agency's Revised Behavior Management Program*.

⁶ See Operational Directive # 2013/02: *Staff and Visitor Entry into Secure Detention Facilities and Inspection of Packages* [in revision]; see also 9 NYCRR § 180.7.

- d. Staff found passing a cell phone or other wireless device to a youth, bringing in a cell phone or other wireless device for a youth's use, or found to have allowed a youth to use his/her personal cell phone or wireless device shall be subject to immediate suspension and disciplinary action up to and including termination.