

A. DFP article (2/7/21) on prisoner telephone call charges totally missed the target on who caused the cause of high call charges for state prisoners in Michigan correctional institutions.

It was not due to Mr. Gores or any phone service vendor when those high charges began.

The blame for the unreasonably high per minute call rate was **due entirely to the Michigan Department of Corrections with full complicity of the Michigan Legislature** in annual budgets beginning with the fiscal year 2010-11 budget until a new contract in 2018 (noted in J below).

The infamous prisoner telephone surcharge, initiated in the final Granholm budget (not her idea) by nefarious language allowing the Michigan Department Corrections (MDOC) to add to a bid contract a **surcharge** to initially fund “special equipment” (supposedly phone-related), that morphed into funding other equipment (like panic buttons for correctional officers ), and now miraculously is used to fund inmate education programs – a **slush fund created and funded BY CONTRACT**. Again, in each instance this excessive phone charge was used to raise money in lieu of GF/GP. The statutory references below are all public records.

B. This is the provision that was in the final MDOC budget for **FY 2010-11**, Sec. 219, ESB 1153, 2010 PA 188:

Sec. 219. Any contract for prisoner telephone services entered into after the effective date of this act shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.

This provision was not in the Senate-passed SB 1153 (S-1), passed by the Senate on March 23, 2010. The provision first appeared in the House-passed SB 1153 (H-1), page 26, passed by the House on June 9, 2010. It was included in the Conference Report for SB 1153; see First Conference Report, page 27. It seemed so innocuous at the time that neither fiscal agency analysis referred to it. Note that the Governor was a Democrat (Granholm), as was the lead House conferee, Rep. Alma Wheeler Smith. The lead Senate conferee was Republican Sen. Alan Cropsey, (All 3 left office when their terms expired January 1, 2011.)

C. Yes, **the same Alma Wheeler Smith** that is part of the Washtenaw CREW effort cited in the Free Press editorial (also 2/7/21) focused on institutional racism in the criminal justice system.

In complete fairness to Alma Wheeler Smith (whose long-term commitment to fairness and justice is unrivaled and for whom I have the greatest respect), she had previously labored as a legislator to eliminate phone surcharges on inmate calls. Absent the exception in Sec. 219, the provision would have been exactly what she had long advocated – no surcharges above cost. My best guess – ask her to confirm – is that MDOC got her to agree to the exception to cover installing phone monitoring equipment in some 40 prisons and that cost may have seemed reasonable. I doubt she had any inkling what MDOC would do with the surcharge later.

Those interested enough may want to pursue the origin of Sec, 219 by contacting Ms. Smith about how that language was put into the House version and kept in the Conference Report – and with what expectation; or by contacting former Sen John Proos who was the lead House Republican on the SB 1153 conference report and then served as the lead Senator on the corrections budget for the next eight years, through the FY 2018-19 budget – during the time the special equipment fund evolved into funding ‘other equipment’, security, and programming. He was the only constant as the House chairs for corrections kept changing. (I was unable to find

out which House Republican chaired MDOC budgets. The full approps chairs signed the conference reports for all GF/GP rolled-up omnibus budget bills in most of the last decade.)

D. The next part of the story is a scandal in its own right. There was a bid on the telephone contract that focused strictly on the cost of an inmate call – without a surcharge. The awarded bid was the subject of litigation. **AFTER** the bid was awarded, **MDOC added the surcharge** that upped the cost from a bid cost of something like 5 cents per minute to 15 or 20 cents per minute. Today the per minute rate is \$0.16. Note that MDOC engineered the surcharge, not the company that won the bid. MDOC made that surcharge part of the terms of the contract after the bid was won. I do not know to what extent the inmate phone service company received any surcharge revenue. However, the most recent contract in 2018 (for 5 years) is different; MDOC gets \$11 million per year off the top of a \$24 million contract, so the company does make a profit after the actual cost (to the company) is deducted. **Ask** whether the provider(s) received surcharge money before 2018 and how much profit the current provider has made since 2018.

To be blunt, the surcharge is effectively a **tax** on inmate calls, imposed not by the Legislature, but created **BY CONTRACT** by a state department, under the guise of being “necessary” to meet “special equipment needs”, “security projects”, inmate “programming” – so, what next?

E. What is the rest of the story over how the SEF slush fund evolved over the past decade?

Fiscal agencies, MDOC, or the state budget office has the history of how long this “special equipment fund” was used for purposes related to inmate phone calls and monitoring those calls. Within 3 years, MDOC figured out how to leverage the money for other needs like paying for inmate programs. It first morphed into other kinds of “equipment” unrelated to inmate telephone calls. A legislator outraged by concerns of the initial bid process and expansion of use of the SEF beyond phone-related equipment did a U-turn with a deal to not fight the revised use if that money were then to be used for inmate programming, which indeed happened. .

F. For FY 2012-13, **2012 PA 200** (HB 5365), Article V, Sec. 219, expanded the scope of use to security projects as evidenced by Sec. 219, subsection (2), below – and also made the special equipment fund a work project account so that a year-end balance would not revert to the General Fund.

“Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this act shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for special equipment funds shall be considered state restricted revenue and shall be used for special equipment and security projects to facilitate the replacement of personal protection systems, and the acquisition of contraband detection systems. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

(3) The department shall submit a report to the house and senate appropriations subcommittees on corrections, the house and senate fiscal agencies, and the state budget director by February 1 outlining revenues and expenditures from special equipment funds. The report shall include all of the following:

(a) A list of all individual projects and purchases financed with special equipment funds in the immediately preceding fiscal year and the amounts expended on each project or purchase.

(b) A list of planned projects and purchases to be financed with special equipment funds during the current fiscal year and the amounts to be expended on each project or purchase.

(c) A review of projects and purchases planned for future fiscal years from special equipment funds.”.

**G.** For the next FY 2013-14, **2013 PA 59**, HB 4328), Article V, Sec. 219, reimagined the use of the special equipment fund with a revised subsection (2), with subsection (1) unchanged:

“(2) Revenues appropriated and collected for special equipment funds shall be considered state restricted revenue. Of this revenue, **\$2,000,000.00 shall be used for programming that is a condition of parole, such as violence prevention programming, sexual offender programming, and thinking for a change, with particular emphasis on individuals who are past their earliest release dates.** Any remaining balance shall be used for special equipment and security projects. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.”.

The actual money for FY 2013-14 went as follows:

**\$5,900,000** was appropriated to partially fund “Equipment and special maintenance”.

**\$6,000,000** was appropriated for “Capital outlay - security improvements”.

**\$2,000,000** for inmate programming. (Does not show up as source for a line-item.)

So, by now the telephone surcharge was no longer used strictly for “equipment” of some kind but had evolved into funding inmate “**programming**” and “**security improvements**” – the slush fund was morphing way beyond inmate telephone call costs. The same provision was retained for FY 2014-15 in **2014 PA 252** (HB 5313).

**H.** By FY 2015-16, **2015 PA 84** (SB 133) the use had further evolved (with similar reporting requirements I have not included here as less relevant) – but the changes highlighted below are significant revisions with the focus shifting, even name of the fund, to inmate programming:

“Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this section shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet **program and special equipment costs**, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for **program and special equipment funds** shall be considered state restricted revenue. **Funding shall be used for prisoner programming, special equipment, and security projects.** Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

In 2015 PA 84, Article V, Sec. 103, **\$8,982,900** was appropriated for prisoner reentry services and per Sec. 104, **\$2,800,000** was appropriated in part for “Equipment and special maintenance” (**\$2,349,100**) and buried for some unidentified purpose (**\$450,900**). For FY 2016-17, **2016 PA 268** (5294), Art. V, Sec. 219, retained similar wording, but the PSEF was disbursed to 4 different line items under the source description “Program and special equipment fund”.

**I.** For FY 2017-18, this from **2017 PA 107** ( EHB 4323), Art V, Sec. 219:

Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this section shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet **program and special equipment costs**, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for program and special equipment funds shall be considered state restricted revenue. Funding shall be used for **prisoner programming, special equipment, and security projects**. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

(3) The department shall submit a report to the senate and house appropriations subcommittees on corrections, . . . . .

Under Sec. 103 Prisoner Reentry and Community Support:

Program and special equipment fund ..... \$ 10,213,200

Under Sec. 104 Information Technology

Program and special equipment fund ..... 441,200

**J.** The current inmate prisoner telephone contract was entered into 2018 and is different from its predecessors. I do not know if that was a bid contract or whether it was signed when 2017 PA 107 [Item I above] was in effect or after 2018 PA 207 [Item K below] took effect. But **query whether that contract is consistent with the dictates of Sec. 219 either way**. MDOC reportedly receives a flat \$11 million annually, while the vendor retains the balance of the proceeds, estimated initially to be around \$24 million on premise of 150,000,000 call minutes. That seems to translate to \$0.16/call – but does not identify the surcharge above the cost of calls. Whatever is above the costs of the service goes to the vendor. With a declining prison population, the call volume may have also lessened, with the vendor receiving less profit annually.

**Qs: What is the cost per call to the vendor? What has been the annual net profit to the vendor in each year under the 2018 contract?**

**K.** For FY 2018-19, from **2018 PA 207**( ESB 848), Art V, Sec. 219:

Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this section shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet **program and special equipment** costs, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for program and special equipment funds shall be considered state restricted revenue. Funding shall be used for **prisoner programming, special equipment, and security projects**. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.

(3) The department shall submit a report to the senate and house appropriations subcommittees on corrections, . . . . .

Under Sec. 103 Offender Success Administration:

Program and special equipment fund ..... 10,213,200

Under

Program and special equipment fund ..... 444,000

**L.** For FY 2019-20, see **2019 PA 64** (HB 4231) [not an omnibus bill], **Sec. 219**:

For that fiscal year, under Sec. 103 (Offender success administration), a staggering sum of **\$34,213,200** was initially appropriated from the “Program and special equipment fund” for unidentified programs under that unit. This was the budget passed when the Executive Office and Legislature were not talking. That sum overstated an accumulated a surplus. A later Supplemental reduced that amount by **\$20 million**. **2019 PA 154** (SB 152).

[Note that a new LSB or Legislature Website change makes it impossible to copy text from 2019 PA 64, but the wording is the same as prior MDOC budget Sec. 219 provisions. Here is a link: [2019-PA-0064.pdf \(mi.gov\)](#). See bottom of page 7, top of page 8, of enrolled bill/PA version.]

**M.** For the current FY 2020-21, **2020 PA 166** (HB 5396), Art V, Sec. 219 (1) and (2) read:

“Sec. 219. (1) Any contract for prisoner telephone services entered into after the effective date of this section shall include a condition that fee schedules for prisoner telephone calls, including rates and any surcharges other than those **necessary to meet program and special equipment costs**, be the same as fee schedules for calls placed from outside of correctional facilities.

(2) Revenues appropriated and collected for program and special equipment funds shall be considered state restricted revenue. Funding shall be used for **prisoner programming, special equipment, and security projects**. Unexpended funds remaining at the close of the fiscal year shall not lapse to the general fund but shall be carried forward and be available for appropriation in subsequent fiscal years.”

The “Program and special equipment fund” is appropriated in FY 2020-21 as follows:

**\$14,326,000** is appropriated under Sec. 103 (Offender success administration) for unidentified programs listed in Sec. 103.

**\$452,800** is appropriated under Sec. 108 (Information technology) as a small portion of \$31 million to be spent for Information technology services and projects.

**N.** That is the long, detailed, and tortured history of why inmate telephone surcharges were created, who initiated them (MDOC), what the original purpose supposedly was, and how the resulting slush fund has been appropriated for the past decade – at the (literal) expense of state inmates and their families! AND it was not due to greed by the phone service company – it was due to some manipulation by MDOC with direct knowledge and ongoing complicity of the State Legislature. Since 2018, the current contract does increase the profit of the provider. **In recent years, the Legislature has been unwilling to replace inmate phone revenue with GF/GP money and MDOC fears a loss of PSEF money would reduce inmate programming.**

**It is past time for this practice of excess inmate phone charges to be exposed and ended.**

The rest is up to you – and, by the way, this is just one of dozens, if not hundreds, of restricted revenue funds and fees created for special objectives instead of GF/GP and often redirected to purposes not envisioned when the revenue source was first created. Once an agency and Legislature get a taste of the money, they cannot give it up – but they can and do find other uses.

Thank you for “listening”. Dig deeper. Will the Governor and legislators stop this practice?

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**Bio Note:** I retired 8 years ago after a 45-year career in various legal and policy positions with the Michigan Legislature, including 12 years as committee counsel under Democratic Chairs of House Judiciary Committee, 2 years drafting legislation in the Legislative Service Bureau, and the last 30 years as legal counsel and policy advisor for the House Republican Policy Office. I covered the MDOC budget for House Republicans during the 2009-10 Session when Democrats had the majority and in 2011-12 when Republicans regained the majority. The telephone surcharge issue has stuck in my craw ever since MDOC’s shenanigans with the SEF were revealed – and watched how initial opposition to it evaporated because the temptation to use that money became irresistible. .

MDOC inmate phone surcharges 02.23.2021 – bat feb 23 2021