

- SUBJECT:** Prohibiting certain contraband in correctional institutions
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 6 ayes — Allen, Hopson, Stick, Alonzo, Haggerty, Mabry  
0 nays  
1 absent — Farrar
- WITNESSES:** For — (*Registered, but did not testify:*) Brian Olsen; Dee Simpson, American Federation of State, County, and Municipal Employees  
  
Against — (*Registered, but did not testify:*) Elizabeth Joblin and Patsy Torres Halanski, Texas Inmate Families Association  
  
On — John Moriarty and Carl Reynolds, Texas Department of Criminal Justice
- BACKGROUND:** Under Penal Code, sec. 38.11, it is a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to \$10,000) for a person to take an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility, to provide those items to an inmate, or to possess or take a controlled substance or dangerous drug onto property owned, used, or controlled by the Texas Department of Criminal Justice (TDCJ), subject to certain exceptions, such as making a delivery to a warehouse, pharmacy, or physician on TDCJ property.  
  
Under Penal Code, sec. 38.09, a person commits an offense if, with intent to facilitate escape, the person brings into a correctional facility or provides an inmate with a deadly weapon or anything that may be useful for escape. The offense is a third-degree felony unless the person provided the inmate with a deadly weapon, in which case it is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000. Penal Code, sec. 1.07, defines deadly weapon as a firearm or anything designed to inflict death or serious bodily injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

Under Penal Code, sec. 46.10, it is a third-degree felony for an inmate to carry, possess, or conceal a deadly weapon in a penal institution. Sec. 46.02 makes it a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) for any person to carry a handgun, illegal knife, or club intentionally, knowingly, or recklessly. Sec. 46.05 makes it a Class A misdemeanor to possess, manufacture, transport, repair, or sell a switchblade knife or knuckles, and a third-degree felony to possess explosive weapons, machine guns, and short-barrel firearms, among other weapons. Sec. 46.035 makes it a third-degree felony for the holder of a handgun license to carry a handgun on the premises of a correctional facility.

Government Code, sec. 494.002 allows the director of TDCJ's institutional division to adopt policies governing the discipline of inmates.

**DIGEST:**

HB 864 would establish a third-degree felony for a person to provide a deadly weapon, a cellular telephone, or money to an inmate at a correctional facility, for any person to possess a deadly weapon in a correctional facility, or for an inmate to possess a cellular telephone. It would be an affirmative defense to the charge of possessing a deadly weapon that the person was a peace officer or employee of the correctional facility authorized to possess the weapon while on duty or traveling to or from work.

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 864 would create penalties for providing money and cellular phones to inmates, as well as for inmates' possession of cellular phones, which pose serious security problems in correctional facilities.

It is undesirable for inmates to have money because they can use it to corrupt TDCJ employees, pay guards for favors, buy drugs or other contraband, or help them escape. For that reason, TDCJ rules prohibit inmates from possessing money and require them instead to draw funds from an Inmate Trust Fund account to make commissary purchases. There is no valid reason for inmates to have cash inside TDCJ. If inmates are being threatened or bribed by other inmates, they should report it to authorities who can deal with the situation administratively.

Cellular telephones also are a serious security risk, because an inmate can use a phone to arrange an escape, drug pickups, or even the murder of a guard, or to keep in touch with gangs and other criminal enterprises in the outside world. Because of the risks associated with unmonitored phone calls, inmates' use of phones is curtailed strictly inside correctional institutions. Prison inmates are limited to one phone call every 90 days and may be subject to electronic monitoring, and the people they call must be on an approved visitor list. HB 864 would reinforce TDCJ's internal rules by creating criminal penalties for providing cellular phones and money to inmates. TDCJ officials have sufficient means at their disposal to locate cell phones inside prison and to enforce this bill by searching inmates and their cells as needed.

Although TDCJ could discipline inmates internally for possessing cellular phones or money, such sanctions often are not effective against offenders who are serving long sentences. Furthermore, HB 864 would prohibit certain behavior by visitors who are not subject to TDCJ's disciplinary rules. For example, under current law, if a visitor gives an inmate money, a cellular phone, or a deadly weapon not used for escape, the only remedy is to bar that person from future visits. More serious sanctions are needed to deter people from bringing dangerous contraband into TDCJ facilities.

HB 864 would make it an offense to provide a deadly weapon to an inmate regardless of whether or not it is intended to help the inmate escape. Under current law, it is difficult for prosecutors to prove that someone provided an inmate with a deadly weapon to facilitate escape, as opposed to for other purposes, such as facilitating a murder. It should be a crime to provide an inmate with a deadly weapon for any purpose. Furthermore, HB 864 would cover a situation in which a person left a cache of weapons outside prison property for an inmate to pick up at a later time.

The bill would not increase the prison population but would deter this type of criminal behavior in the first place. The Legislative Budget Board has determined that HB 864 would produce no significant fiscal impact.

**OPPONENTS  
SAY:**

HB 864 is unnecessary. The contraband that it would prohibit — money, cellular phones, and weapons — already is banned under TDCJ's internal rules. TDCJ already can punish inmates for these infractions by placing them in solitary confinement, taking away privileges like recreation, use of the

commissary, or visits, or permanent loss of “good time.” These sanctions are sufficient to address the problems associated with contraband in prisons.

Current law contains sufficient prohibitions against deadly weapons. It is already against the law for an inmate to possess a deadly weapon, and people in the free world may not carry certain weapons in any public place, including prisons, under the general prohibited-weapons statutes. Licensed handgun holders specifically may not bring guns onto the premises of correctional institutions. Furthermore, if they provide inmates with a means of escape, they are subject to more severe criminal penalties.

Sometimes inmates need money inside prison to protect themselves from other inmates, and family members may give their loved ones money for the valid reason of buying them protection. Although in an ideal world, inmates would report this kind of bribery, in practice, inmates who are threatened do not report it to authorities out of fear of retribution.

At a time when Texas is facing serious budget shortfalls, the Legislature should not create new crimes that would result in increased numbers of inmates serving time in prison, at a high cost to the state.

**OTHER  
OPPONENTS  
SAY:**

While HB 864 would be a step in the right direction, it would not go far enough. The bill should authorize TDCJ to use high-tech equipment to locate cellular phone signals electronically.