

SUBJECT: Banning wireless communications devices in correctional facilities

COMMITTEE: Corrections — favorable without amendment

VOTE: 6 ayes — Madden, D. Jones, R. Allen, Haggerty, Hochberg, Noriega
0 nays
1 absent — McReynolds

WITNESSES: None

BACKGROUND: Penal Code sec. 38.11 makes it a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to provide a cell phone to TDCJ inmate. It also makes it an offense for an inmate to possess a cell phone.

DIGEST: HB 2077 would make it a third-degree felony to provide a wireless communication device or a component of one of those devices to a Texas Department of Criminal Justice (TDCJ) inmate and for an inmate to possess a wireless communication device or a component of one.

The bill would take effect September 1, 2005, and apply only to offenses committed on or after that date.

SUPPORTERS SAY: HB 2077 is necessary to update state law concerning prohibited items in prisons. Current law bans persons from providing cell phones to inmates and inmates from possessing them, but the language is not broad enough to cover some of the new wireless communication devices such as Blackberry or Palm Pilot personal digital assistants (PDAs). These devices can be used to make phone calls, send and receive e-mail, and surf the Internet. TDCJ also has experienced instances of persons smuggling components of communication devices that when taken as individual pieces are not specifically prohibited by current law but can be assembled to make a communication device.

HB 2077 would address these problems by broadening current law to include all wireless communication devices and their components. It

would remain a crime for a non-prisoner to provide these things to an inmate and for an inmate to possess them, but neither current law nor HB 2077 makes it an offense for a non-prisoner to possess cell phones or wireless communication devices at a correctional institution. This ensures that prison workers or visitors would not be subject to criminal prosecution for possessing everyday, innocent items such as cell phones or PDAs.

Although TDCJ could discipline inmates internally for possessing a wireless communication device, it makes no sense for the law that prohibits cell phones not to be broad enough to cover other wireless communication devices and their components. TDCJ sanctions often are not effective against offenders who are serving long sentences, and in this case would not prohibit certain behavior by visitors. For example, if a visitor gave an inmate a wireless communication device not used for escape, the most serious sanction available would be to bar that person from future visits. More serious sanctions are needed to deter people from bringing into TDCJ facilities contraband that could be used to facilitate an escape or crime.

**OPPONENTS
SAY:**

HB 2077 is unnecessary because TDCJ has authority to establish rules banning wireless communication devices and their components. TDCJ already can punish inmates for rule infractions such as these by placing them in solitary confinement or taking away privileges or through the loss of time reduced from sentences for good behavior. In addition, TDCJ can ban persons from its facilities. In particular, HB 2077 could be excessively punitive in relation to providing “components” of wireless communication devices because a family member might not know that an individual component could be used to make a banned device.