

SUBJECT: Offense for introducing cell phones, money, or tobacco into jails

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 8 ayes — R. Allen, W. Smith, Casteel, Coleman, Laney, Naishtat, Olivo, Otto

0 nays

1 absent — Farabee

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; (*Registered, but did not testify:* Donald Lee, Texas Conference of Urban Counties; John Thompson, Polk County)

Against — None

BACKGROUND: Penal Code, sec. 38.11(a), makes it 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 provide an alcoholic beverage, controlled substance, dangerous drug, or deadly weapon to an inmate in a correctional facility. It also is a third-degree felony for a person to provide a cell phone, money, or tobacco products to an inmate in a correctional facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ).

DIGEST: CSHB 549 would amend Sec. 38.11(a) to establish two new offenses punishable as third-degree felonies:

- providing a cell phone or money to a person confined in a local jail regulated by the Commission on Jail Standards; and
- providing a tobacco product to a person confined in a local jail regulated by the Commission on Jail Standards if providing the tobacco product violated an ordinance in effect at that jail.

Applicable ordinances would include those that prohibit or restrict possession of tobacco products by prisoners in the jail and those that restrict the manner in which such products may be provided to prisoners.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS
SAY:

CSHB 549 would create penalties for providing money or cell phones to prisoners in municipal and county jails. Prisoners having money poses a security risk in jails because they can use it to pay guards for favors or to buy drugs. Possession of cell phones in jails poses a similar risk because a prisoner could use a cell phone to arrange drug pickups or to keep in touch with gangs or other criminals. Making it a felony offense to provide cell phones or money to prisoners in local jails would help jails enforce the ban on possession of those items that TDCJ already has for state facilities.

The bill also would create a penalty for providing a tobacco product to a prisoner in a jail if doing so would violate an ordinance or rule already in effect at that jail. Many jails already forbid the possession of tobacco products by prisoners, but enforcing that ban is difficult because there is no penalty for providing such products to inmates. CSHB 549 would simply give jails that already ban or limit possession of tobacco products more leverage in enforcing that ban.

OPPONENTS
SAY:

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

Prisoners typically stay in jails for much shorter periods than they stay in prisons. Thus, banning the provision of tobacco products to those in jail does not serve the same purpose as banning the practice in prison. Prisoners often are in jail for less than one week, and forcing a prisoner who is addicted to nicotine to go without it during that time would serve little purpose for the jail but would create an unnecessary hardship on the prisoner.

CSHB 549 would create two new felonies. Prison space has reached critical mass, and prisons are anticipated to run out of space this year. Creating new offenses that would funnel more people into prisons would create a burden on the prison system that it simply cannot handle.

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NOTES: HB 549 as introduced would have banned providing tobacco products to prisoners in jails regardless of whether an individual jail restricted the possession of tobacco or placed limits on the method in which it could be provided to prisoners.