

SUBJECT: Adding escape, contraband offenses to organized criminal activity offense

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Fletcher, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

3 absent — Christian, Hodge, Kent

WITNESSES: For — (*Registered, but did not testify*: Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney's Office; Kevin Petroff, Harris County District Attorney's Office)

Against — Matthew Simpson, ACLU of Texas

On — Gina DeBottis, Special Prosecution Unit; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Under Penal Code, sec. 71.02, a person commits the offense of engaging in organized criminal activity if the person commits or conspires to commit certain offenses with the intent to participate in a combination or the profits of a combination or as a member of a criminal street gang. A combination is three or more people collaborating in criminal activities.

In general, the penalty for an offense committed as part of organized criminal activity is one category higher than the most serious offense committed. The penalty for conspiring to commit an offense as part of organized criminal activity is the same penalty degree as the most serious offense the person conspired to commit.

DIGEST: HB 2086 would add the following four offenses to the list of those subject to an enhanced penalty when undertaken as part of organized criminal activity:

- escape from custody;
- permitting or facilitating escape;

- providing implements for an escape from custody; and
- providing prohibited substances or items in adult and juvenile correctional or detention facilities.

The bill would take effect September 1, 2009, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2086 would give law enforcement authorities an additional necessary tool to go after prison gangs, persons who help prison inmates escape, and persons who provide offenders with contraband. HB 2086 would enhance the penalty for these offenses when committed as part of organized criminal activity to help deter and punish the offenders more appropriately. Because these crimes put the public's safety at risk, these offenses deserve to carry harsher penalties when engaged in by more than one person.

Current law against escapes from custody, assisting escapes, and providing contraband to prison inmates already is applied to individuals who commit these crimes, but sometimes people work together to commit them. This increases the seriousness, and, in some cases, the success of the crimes. It may be difficult under current law to obtain appropriate penalties because the punishment for one person's individual crime does not reflect the seriousness of the crime if it was engaged in as a group. In some cases, HB 2086 could result in tougher, more appropriate penalties than using the state's law of parties for an accomplice to crime.

HB 2086 would be an important tool to shut down networks of friends, families, corrupt correctional officers, and others who supply contraband to inmates. For example, several people may be involved in supplying cell phones to inmates. One person may buy the cell phone or the airtime minutes, another may transport it to the prison, and yet another may take it inside of the prison, all as part of an organized criminal activity.

HB 2086 also could help combat prison gangs that work together to obtain or distribute contraband such as drugs. These situations may involve groups of gang members both outside and inside a prison.

**OPPONENTS
SAY:**

Current law is adequate to prosecute those committing crimes involving escape, assisting escape, or supplying contraband to prison inmates. In addition to being able to use the individual crimes themselves, in some cases the state's law of parties could be used to charge people as

accomplices to these crimes. HB 2086 could allow for excessive penalties for these crimes, which already are punished severely.