

- SUBJECT:** Third-degree felony for possessing cell phone in jail
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 10 ayes — McReynolds, Madden, Dutton, England, Hodge, Marquez, Martinez, S. Miller, Ortiz, Sheffield
- 0 nays
- 1 absent — Kolkhorst
- WITNESSES:** For — (*Registered, but did not testify:* Marc Chavez, Lubbock County District Attorney’s Office; Katrina Daniels, Bexar County Criminal District Attorney’s Office; Kevin Petroff, Harris County District Attorney’s Office; John Rolater, Collin County Criminal District Attorney’s Office)
- Against — None
- On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Penal Code sec. 38.07 makes it a crime to provide certain prohibited substances and items to an inmate of a correctional facility or to someone in the custody of a secure correctional or secure detention facility for juveniles. Prohibited substances and items include alcoholic beverages, controlled substances, dangerous drugs, weapons, cellular telephones, other wireless communications devices, components of cell phones or wireless devices, cigarettes, tobacco products, and money.
- Subsec. (j) deals specifically with cell phones in the Texas Department of Criminal Justice and juvenile facilities. Under this section it is an offense for TDCJ inmates or juveniles in secure custody to possess a cell phone or wireless communication device or one of their components.
- Subsecs. (b) and (d) make it an offense to take certain things into correctional facilities or to possess certain things while on the property of correctional facilities. Subsec. (c) makes it an offense to take certain things on TDCJ and TYC property or the property of secure juvenile facilities.

These offenses are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

Penal Code sec. 1.07(a)(14) (A), (B), and (C) define “correctional facility” to include municipal and county jails, a confinement facility operated by TDCJ, and confinement facilities operated by local community supervision and corrections (probation) departments. It does not include a community corrections facility operated by a local probation department.

DIGEST: CSHB 3228 would expand the current offense of possessing a cellular phone in state prisons and secure juvenile facilities to include possessing a cell telephone in a municipal or county jail.

The bill also would add taking a controlled substance or dangerous drug on the property of a correctional facility to the list that makes attempting to commit one of the crimes in sec. 38.11 a third-degree felony. It also would make the offense prohibiting taking controlled substances or dangerous drugs onto the property of certain facilities apply to local jails.

The bill would reorganize Penal Code sec. 38.11 to list the types of substances and items that are currently prohibited and to make the offense of providing or possessing them apply to all correctional facilities. “Correctional facility” would be defined by Penal Code sec. 1.07(a)(14) (A), (B), and (C) as municipal and county jails, a confinement facility operated by TDCJ, and confinement facilities operated by local community supervision and corrections (probation) departments.

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

SUPPORTERS SAY: CSHB 3228 would close a loophole in state law by extending the current offense of possessing a cell phone so that it applied to persons in local jails and would reorganize, without making substantive changes, statutes dealing with providing and possessing certain items in correctional facilities to make them easier to understand and to use.

While many of the offenses dealing with providing prohibited substances apply to local jail inmates, one important section making it a crime to possess a cell phone while in custody does not. Instead, this offense can be a class C misdemeanor (maximum fine of \$500) under Penal Code sec. 38.114. Under this section, possessing a cell phone in a local jail would be

an offense if the jail included cell phones in its definition of contraband. A class C misdemeanor does not reflect the seriousness of this crime and provides little deterrent to someone already in jail.

CSHB 3228 would remedy this by amending Penal Code 38.11 (j) to make the offense of possessing a cell phone apply to all persons in all correctional facilities, including county jails. Possessing a cell phone in a jail poses the same security threat as possessing one in all other correctional facilities and should be treated as such. This offense should carry the same third-degree felony punishment currently applied to providing a cell phone to a person in a local jail.

The bill would not include the possession of cell phones in community corrections facilities operated by local probation departments as part of the offense. This would give those facilities the option to define cell phones as contraband and make their possession illegal, if they desired. These facilities often are treatment or rehabilitation programs and house persons on probation, and they may want the flexibility to allow cell phones due to the nature of their program.

CSHB 3228 also would reorganize the offenses prohibiting certain items in correctional facilities. This statute has been amended numerous times and is confusing and difficult to use. CSHB 3228 would address these problems by reorganizing and harmonizing these statutes by different types of prohibited substances and making them illegal to provide or possess in all correctional institutions. It also would treat attempting to commit the crimes uniformly.

**OPPONENTS
SAY:**

The jump in enhancement from a class C misdemeanor to a third-degree felony for cell phone possession in a local jail could be too great of a leap. Any penalty enhancement has the potential to lead to increased incarceration, something the state should be cautious about given the strain it puts on state resources.

NOTES:

The committee substitute took community corrections facilities operated by local probation departments out of the definition of correctional facilities used in the bill.