

BILL ANALYSIS

Senate Research Center
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H.B. 3228
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 78th Legislature, Regular Session, 2003, enacted legislation relating to prohibited substances and items in correctional facilities or on property of the Texas Department of Criminal Justice (TDCJ). The intent of the legislation was to make it a third-degree felony offense for an inmate of a correctional facility operated by or under contract with TDCJ to possess a cellular telephone. The law has been amended by subsequent legislatures, but the offense of possessing a cellular telephone remains applicable only to a narrow definition of a TDCJ correctional facility that does not include certain local facilities such as a county jail.

This bill expands the definition of "correctional facility," in which it is a crime for a person held in lawful custody to possess a prohibited substance or item, including a cellular telephone or other wireless communication device or a component of one of those devices.

H.B. 3228 amends current law relating to the offense of prohibited substances and items in correctional facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts and amends Section 38.11, Penal Code, as amended by Chapters 949 (H.B. 1575) and 1092 (H.B. 2077), Acts of the 79th Legislature, Regular Session, 2005, as follows:

Sec. 38.11. New heading: PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL FACILITY. (a) Provides that a person commits an offense if the person provides:

(1) an alcoholic beverage, controlled substance, or dangerous drug to a person in the custody of a correctional facility, except on the prescription of a practitioner, rather than an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except on the prescription of a physician or practitioner, as defined in Section 551.003 (Definitions), Occupations Code;

(2) a deadly weapon to a person in the custody of a correctional facility; rather than a deadly weapon to an inmate of a correctional facility or to a person in the custody of a secure correctional facility or secure detention facility for juveniles;

(3) a cellular telephone or other wireless communications device or a component of one of those devices to a person in the custody of a correctional facility, rather than a cellular telephone or other wireless communications device or a component of one of those devices, cigarette, tobacco product, or money to an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice

(TDCJ) or to a person in the custody of a secure correctional facility or secure detention facility for juveniles, except for money that is provided for the benefit of the juvenile in accordance with facility rules;

(4) money to a person confined in a correctional facility, rather than a cellular telephone or money to a person confined in a local jail regulated by the Commission on Jail Standards (commission); or

(5) a cigarette or tobacco product to a person confined in a correctional facility, except that if the facility is a local jail regulated by the Commission on Jail Standards, the person commits an offense only if providing the cigarette or tobacco product, violates certain rules or regulations adopted by the sheriff or jail administrator. Makes nonsubstantive and conforming changes.

(b) Deletes existing text providing that a person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a secure correctional facility or a secure detention facility for juveniles, except for delivery to a facility warehouse, pharmacy, or physician.

(c) Provides that a person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility, rather than TDCJ, the Texas Youth Commission (TYC), or a secure correctional facility or secure detention facility for juveniles, except for delivery to a warehouse, pharmacy, or physician on property owned, used, or controlled by TDCJ, TYC, or the facility.

(d) Provides that a person commits an offense if the person possesses a controlled substance or dangerous drug while in a correctional facility or on property owned, used, or controlled by a correctional facility or possesses a deadly weapon while in a correctional facility. Deletes existing text providing that a person commits an offense if the person possesses a controlled substance or dangerous drug while on property owned, used, or controlled by TDCJ, TYC, or a secure correctional facility or secure detention facility for juveniles, or in a correctional facility or a secure correctional facility or secure detention facility for juveniles, or possesses a deadly weapon while in a correctional facility or in a secure correctional facility or secure detention facility for juveniles. Makes nonsubstantive changes.

(e) Provides that it is an affirmative defense to prosecution under Subsection (b), (c), or (d)(1) (relating to possessing a controlled substance or dangerous drug while in a correctional facility) that the person possessed the alcoholic beverage, controlled substance, or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the beverage, substance, or drug to a warehouse, pharmacy, or practitioner, rather than physician, on property owned, used, or controlled by the correctional facility, rather than TDCJ or TYC, or by the operator of a secure correctional facility or secure detention facility for juveniles. Provides that it is an affirmative defense to prosecution under Subsection (d)(2) (relating to possessing a deadly weapon while in a correctional facility) that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility who is authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment. Makes nonsubstantive changes.

(f) Redefines "correctional facility."

(g) Provides that an offense under this section is a felony of the third degree.

(h) Provides that notwithstanding Section 15.01(d) (relating to the penalties for an offense under this section), if a person commits the offense of criminal attempt to commit an offense under Subsection (a), (b), or (c), the offense committed

under Section 15.01 (Criminal Attempt) is a felony of the third degree. Makes nonsubstantive changes.

(i) Provides that it is an affirmative defense to prosecution under Subsection (b) that the actor takes four ounces or less of an alcoholic beverage into the correctional facility, rather than the correctional facility or the secure correctional facility or secure detention facility for juveniles, and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) Provides that a person commits an offense if the person while confined in a correctional facility possesses a cellular telephone or other wireless communications device or a component of one of those devices, rather than provides that a person commits an offense if the person while an inmate of a correctional facility operated by or under contract with TDCJ or while in the custody of a secure correctional facility or secure detention facility for juveniles possesses a cellular telephone or other wireless communications device or a component of one of those devices.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective Date: September 1, 2009.