

AN ACT

relating to prohibiting the introduction or possession of certain items in correctional facilities or on certain property of the Texas Department of Criminal Justice; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 38.11, Penal Code, is amended by amending Subsections (a), (d), and (e) and adding Subsection (j) to read as follows:

(a) A person commits an offense if the person provides:

(1) an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility, except on the prescription of a physician or practitioner, as defined in Section 551.003, Occupations Code;

(2) a deadly weapon to an inmate of a correctional facility; or

(3) a cellular telephone, cigarette, tobacco product, or money to an inmate of a correctional facility operated by or under contract with the Texas Department of Criminal Justice.

(d) A person commits an offense if the person:

(1) possesses a controlled substance or dangerous drug while:

(A) [~~(1)~~] on property owned, used, or controlled by the Texas Department of Criminal Justice; or

(B) [~~(2)~~] in a correctional facility; or

1 (2) possesses a deadly weapon while in a correctional
2 facility.

3 (e) It is an affirmative defense to prosecution under
4 Subsection (d)(1) of this section that the person possessed the
5 controlled substance or dangerous drug pursuant to a prescription
6 issued by a practitioner or while delivering the substance or drug
7 to a warehouse, pharmacy, or physician on property owned, used, or
8 controlled by the department. It is an affirmative defense to
9 prosecution under Subsection (d)(2) of this section that the person
10 possessing the deadly weapon is a peace officer or is an officer or
11 employee of the correctional facility authorized to possess the
12 deadly weapon while on duty or traveling to or from the person's
13 place of assignment.

14 (j) A person commits an offense if the person while an
15 inmate of a correctional facility operated by or under contract
16 with the Texas Department of Criminal Justice possesses a cellular
17 telephone.

18 SECTION 2. Section 38.11(f), Penal Code, is amended by
19 adding Subdivisions (3) and (4) to read as follows:

20 (3) "Cigarette" has the meaning assigned by Section
21 154.001, Tax Code.

22 (4) "Tobacco product" has the meaning assigned by
23 Section 155.001, Tax Code.

24 SECTION 3. The heading to Section 38.11, Penal Code, is
25 amended to read as follows:

26 Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL
27 FACILITY OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE.

1 SECTION 4. (a) The change in law made by this Act applies
2 only to an offense committed on or after the effective date of this
3 Act. For purposes of this section, an offense is committed before
4 the effective date of this Act if any element of the offense occurs
5 before the effective date.

6 (b) An offense committed before the effective date of this
7 Act is covered by the law in effect when the offense was committed,
8 and the former law is continued in effect for that purpose.

9 SECTION 5. This Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I certify that H.B. No. 864 was passed by the House on April 3, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 864 on May 26, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 864 was passed by the Senate, with amendments, on May 24, 2003, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor