

## **BILL ANALYSIS**

C.S.H.B. 428  
By: Madden  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law makes the possession of cell phones illegal for offenders in correctional facilities. Individuals who provide cell phones to offenders commit an offense by providing the phones. Cell phones are recovered from offenders on prison property frequently. In order to determine the origin of the confiscated phones, subscriber information and service information must be obtained. Communications common carriers will only surrender the information through the subpoena process. Currently, the inspector general of the Texas Department of Criminal Justice (inspector general) has to obtain a grand jury subpoena to accomplish this task. This can be a time consuming process that interrupts the normal duties of the various grand juries, and the prosecutors who serve them throughout the state.

C.S.H.B. 428 permits the inspector general to issue an administrative subpoena, upon a showing of materiality, for these records. The process would relieve the burden on the grand jury and enable the inspector general to obtain the needed information in an orderly and regular fashion. This will enable the inspector general to identify individuals who may have provided offenders with these cell phones and will facilitate prosecution of such individuals. It may also enable the inspector general to thwart criminal activity and escape attempts.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 428 amends the Government Code to authorize the inspector general of the Texas Department of Criminal Justice (inspector general) to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel the production of the carrier's or service's business records that disclose information about the carrier's or service's customers or users of the services offered by the carrier or service and that are material to a criminal investigation of a potential escape, violation of Section 38.11, Penal Code, or other offense involving inmates or the operations of the Texas Department of Criminal Justice.

C.S.H.B. 428 provides that, in Section 493.0191, Government Code, "communications common carrier" means a person that provides commercial telephone services or a provider that bills customers for those services, regardless of the technology used to provide the service. C.S.H.B. 428 provides that, in Section 493.0191, Government Code, "electronic communications service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

### **EFFECTIVE DATE**

September 1, 2007.

## **COMPARISON OF ORIGINAL TO SUBSTITUTE**

H.B. 428 provides that, in Section 493.0191, Government Code, "communications common carrier" means a person engaged as a common carrier for hire in the transmission of wire or electronic communications.

C.S.H.B. 428 provides that, in Section 493.0191, Government Code, "communications common carrier" means a person that provides commercial telephone services or a provider that bills customers for those services, regardless of the technology used to provide the service.