

BILL ANALYSIS

C.S.H.B. 1481
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Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The presence of cellular telephones in correctional facilities has created a serious security problem for these facilities. Cell phones are easy to conceal and difficult to locate, and though exhaustive searches of facilities have unearthed many phones, others continue to be concealed because offenders have contrived new methods to thwart the efforts of security personnel to locate and confiscate the phones. Law enforcement agencies have no tools with which to detect and locate cell phones, and current law does not address the activities of people who acquire phones for offenders, make phones available for delivery to offenders, or purchase service for the illegal phones.

C.S.H.B. 1481 provides law enforcement agencies with valuable tools to detect and monitor illegal cell phones. The bill adds to the list of offenses for which a wire intercept can be obtained and provides that it is an offense to acquire a cell phone for delivery to an offender, to deliver a cell phone to another for delivery to an offender, and to pay for service for the use of a wireless communication device. The bill allows the inspector general of the Texas Department of Criminal Justice and the inspector general of the Texas Youth Commission to use equipment necessary to monitor cell phone conversations.

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. 1481 amends the Code of Criminal Procedure to include a felony for knowingly delivering an abusable volatile chemical to a minor and for providing a prohibited substance or item to a person in the custody of certain adult or juvenile detention or correctional facilities among the offenses for which a judge may authorize interception of wire, oral, or electronic communications. The bill removes a felony for the use, possession, delivery, sale, or manufacture of inhalant paraphernalia from the list of offenses for which the judge is so authorized.

C.S.H.B. 1481 authorizes the Texas Department of Criminal Justice (TDCJ) and the Texas Youth Commission (TYC) to own electronic, mechanical, or other devices for a use or purpose authorized by law concerning the detection and monitoring of cellular telephones and to authorize the inspector general of TDCJ and the inspector general of TYC, a commissioned officer of those offices, or another person acting in the presence and under the direction of a commissioned officer of those offices to possess, install, operate, or monitor those devices.

C.S.H.B. 1481 authorizes the office of the inspector general of TDCJ, to use without a warrant, electronic, mechanical, or other devices to detect the presence or use of a cellular telephone or other wireless communications device in a correctional facility; to intercept, monitor, detect, without a warrant or, as authorized by applicable federal laws and regulations, prevent the

transmission of any communication transmitted through the use of a cell phone or other wireless communications device in a correctional facility; and to use, to the extent authorized by law, any information obtained via interception, monitoring, or detection, including the contents of an intercepted communication, in any criminal or civil proceeding before a court or other governmental agency or entity. The bill requires the inspector general, not later than the 30th day after the date on which the office of the inspector general uses a device for the purposes of detection, interception, monitoring, or prevention, to report the use of the device to a prosecutor with jurisdiction in the county in which the device was used or the special prosecution unit established under state law if that unit has jurisdiction in the county in which the device was used. The bill requires the office of the inspector general, when using a device for such purposes, to minimize the impact of the device on any communication that is not reasonably related to the detection of the presence or use of a cell phone or other wireless communications device in a correctional facility. The bill establishes that a person confined in a correctional facility does not have an expectation of privacy with respect to the possession or use of a cell phone or other wireless communications device located on the premises of the facility, and that the person who is confined, and any person with whom that person communicates through the use of a cell phone or other wireless communications device, does not have an expectation of privacy with respect to the contents of any communication transmitted by the cell phone or wireless communications device. The bill defines "correctional facility" for the purposes of these provisions authorizing detection.

C.S.H.B. 1481 amends the Government Code to authorize TDCJ to own and the office of inspector general of TDCJ to possess, install, operate, or monitor an electronic, mechanical, or other device, as defined by state law relating to the interception and use of wire, oral, or electronic communications. The bill requires the inspector general to designate in writing the commissioned officers of the inspector general's office who are authorized to possess, install, operate, and monitor electronic, mechanical, or other devices for TDCJ. The bill authorizes an investigative or law enforcement officer or other person, on the request of the inspector general's office, to assist the office in the operation and monitoring of an interception of wire, oral, or electronic communications if the investigative or law enforcement officer or other person is designated by the executive director of TDCJ for that purpose and acts in the presence and under the direction of a commissioned officer of the inspector general.

C.S.H.B. 1481 amends the Human Resources Code to authorize TYC to own and the office of inspector general of TYC to possess, install, operate, or monitor electronic, mechanical, or other devices, as defined by state law. The bill requires the inspector general to designate in writing the commissioned officers of the inspector general's office who are authorized to possess, install, operate, and monitor such devices for TYC. The bill authorizes an investigative or law enforcement officer or other person, on request of the inspector general's office, to assist the office in the operation and monitoring of an interception of wire, oral, or electronic communications if the investigative or law enforcement officer or other person is designated by the executive commissioner of TYC for that purpose and acts in the presence and under the direction of a commissioned officer of the inspector general.

C.S.H.B. 1481 amends the Penal Code to establish a defense to prosecution for an offense of intentionally manufacturing, assembling, possessing, or selling an electronic, mechanical, or other device knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, oral, or electronic communications and that the device or a component of the device has been or will be used for an unlawful purpose, if the electronic, mechanical, or other device is possessed by a person authorized to possess the device as provided in the above Government Code and Human Resources Code provisions.

C.S.H.B. 1481 reenacts and amends Sections 38.11(a) and (j), Penal Code, as amended by Chapters 949 (H.B. 1575) and 1092 (H.B. 2077), Acts of the 79th Legislature, Regular Session, 2005, to expand the conditions under which a person who provides or possesses with the intent to provide a cellular telephone or other wireless communications device or component of one of

those devices, cigarette, tobacco product, or money to a person in the custody of certain correctional facilities commits an offense to include providing any of these items to a person in the custody of TYC or another secure correctional facility for juveniles. The bill expands the conditions under which a person who possesses a cellular telephone or other wireless communications device or a component of one of those devices while in the custody of certain correctional facilities commits an offense to include possessing any of these items in the custody of TYC or another secure correctional facility for juveniles.

C.S.H.B. 1481 amends the Penal Code to make it an offense to acquire or provide, with the intent to provide or to make a cellular telephone or other wireless communications device or a component of one of those devices available for use by an inmate of a correctional facility operated by or under contract with TDCJ or by a person in the custody of TYC or another secure correctional facility for juveniles or a secure detention facility for juveniles, a cellular telephone or other wireless communications device or a component of one of those devices to be delivered to the inmate or person in custody, a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the inmate or person in custody, or to make a payment to a communication common carrier or to any communication service that provides to its users the ability to send or receive wire or electronic communications. The bill defines "component" as any item necessary for the current, ongoing, or future operation of a cellular telephone or other wireless communications device, including a subscriber identity module card or functionally equivalent portable memory chip, a battery or battery charger, and any number of minutes that have been purchased or for which a contract has been entered into and during which a cellular telephone or other wireless communications device is capable of transmitting or receiving communications.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1481 differs from the original by providing that a person commits an offense if the person provides or possesses with the intent to provide certain prohibited substances and items to a person in the custody of certain adult or juvenile correctional facilities, whereas the original does not include possession with the intent to provide those items to such a person in custody as a condition that constitutes the offense. The substitute adds a provision not in the original defining "component" for the purposes of state law regarding prohibited substances and items in adult or juvenile or detention facilities or on Texas Department of Criminal Justice (TDCJ) or Texas Youth Commission (TYC) property.

C.S.H.B. 1481 adds provisions not in the original authorizing the inspector general of TDCJ to use electronic, mechanical, or other devices without a warrant for certain purposes and to use, to the extent authorized by law, any information obtained via interception, monitoring, or detection in any criminal or civil proceeding before a court or other governmental agency or entity. The substitute adds provisions not in the original setting forth the inspector general's duties when such a detection device is used. The substitute adds provisions not in the original establishing that a person confined in a correctional facility and any person with whom that person communicates through the use of a cell phone or other wireless communications device does not have an expectation of privacy with respect to the possession or use of a cell phone or other wireless communications device located on the facility's premises or to the contents of any communication transmitted by any such device. The substitute adds a provision defining "correctional facility" for the purposes of these provisions regarding the inspector general's authority to detect devices in a correctional or detention facility.