

## **BILL ANALYSIS**

C.S.H.B. 3228  
By: Madden  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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.

C.S.H.B. 3228 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.

### **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. 3228 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, to expand the definition of "correctional facility" for purposes of the offense prohibiting certain substances and items in correctional facilities to include a municipal or county jail, a confinement facility operated by or under contract with the Texas Department of Criminal Justice, and a secure correctional facility or secure detention facility and to make conforming changes.

C.S.H.B. 3228 removes an exception to the application of the offense of taking an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility and to the offense of taking a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility for a person delivering the substance to a warehouse, pharmacy, or physician of the facility or on the facility property, as applicable. The bill expands an affirmative defense to prosecution to include for the offense of taking an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility or for the offense of taking a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility, that the person possessed the beverage, substance, or drug or was delivering the substance pursuant to a prescription issued by a practitioner. The bill specifies that it is a third-degree felony offense if a person commits criminal attempt to commit the offense of taking a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility.

### **EFFECTIVE DATE**

September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3228 differs from the original by excluding a community corrections facility operated by a community supervision and corrections department from the definition of "correctional facility," for purposes of the offense prohibiting certain substances and items in correctional facilities, whereas the original includes such a facility in that definition.