

By: Madden

H.B. No. 1481

Substitute the following for H.B. No. 1481:

By: McReynolds

C.S.H.B. No. 1481

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain offenses regarding the possession or use of a
3 cellular telephone by an inmate or defendant in a correctional or
4 detention facility and to the detection and monitoring of that
5 possession or use.

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

7 SECTION 1. Sections 38.11(a) and (j), Penal Code, as
8 amended by Chapters 949 (H.B. 1575) and 1092 (H.B. 2077), Acts of
9 the 79th Legislature, Regular Session, 2005, are reenacted and
10 amended to read as follows:

11 (a) A person commits an offense if the person provides, or
12 possesses with the intent to provide:

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

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

22 (3) a cellular telephone or other wireless
23 communications device or a component of one of those devices,
24 cigarette, tobacco product, or money to an inmate of a correctional

1 facility operated by or under contract with the Texas Department of
2 Criminal Justice or to a person in the custody of the Texas Youth
3 Commission or another [~~a~~] secure correctional facility for
4 juveniles or a secure detention facility for juveniles, except for
5 money that is provided for the benefit of the juvenile in accordance
6 with facility rules;

7 (4) a cellular telephone or money to a person confined
8 in a local jail regulated by the Commission on Jail Standards; or

9 (5) a cigarette or tobacco product to a person
10 confined in a local jail regulated by the Commission on Jail
11 Standards and in providing the cigarette or tobacco product the
12 person violates a rule or regulation adopted by the sheriff or jail
13 administrator that:

14 (A) prohibits the possession of a cigarette or
15 tobacco product by an inmate confined in the jail; or

16 (B) places restrictions on:

17 (i) the possession of a cigarette or
18 tobacco product by an inmate confined in the jail; or

19 (ii) the manner in which a cigarette or
20 tobacco product may be provided to an inmate confined in the jail.

21 (j) A person commits an offense if the person, while an
22 inmate of a correctional facility operated by or under contract
23 with the Texas Department of Criminal Justice or while in the
24 custody of the Texas Youth Commission or another [~~a~~] secure
25 correctional facility for juveniles or a secure detention facility
26 for juveniles, possesses a cellular telephone or other wireless
27 communications device or a component of one of those devices.

1 SECTION 2. Section 38.11(f), Penal Code, is amended by
2 adding Subdivision (6) to read as follows:

3 (6) "Component" means any item necessary for the
4 current, ongoing, or future operation of a cellular telephone or
5 other wireless communications device, including a subscriber
6 identity module card or functionally equivalent portable memory
7 chip, a battery or battery charger, and any number of minutes that
8 have been purchased or for which a contract has been entered into
9 and during which a cellular telephone or other wireless
10 communications device is capable of transmitting or receiving
11 communications.

12 SECTION 3. Section 38.11, Penal Code, is amended by adding
13 Subsection (k) to read as follows:

14 (k) A person commits an offense if, with the intent to
15 provide to or make a cellular telephone or other wireless
16 communications device or a component of one of those devices
17 available for use by an inmate of a correctional facility operated
18 by or under contract with the Texas Department of Criminal Justice
19 or by a person in the custody of the Texas Youth Commission or
20 another secure correctional facility for juveniles or a secure
21 detention facility for juveniles, the person:

22 (1) acquires a cellular telephone or other wireless
23 communications device or a component of one of those devices to be
24 delivered to the inmate or person in custody;

25 (2) provides a cellular telephone or other wireless
26 communications device or a component of one of those devices to
27 another person for delivery to the inmate or person in custody; or

1 (3) makes a payment to a communication common carrier,
2 as defined by Article 18.20, Code of Criminal Procedure, or to any
3 communication service that provides to its users the ability to
4 send or receive wire or electronic communications.

5 SECTION 4. The heading to Article 18.20, Code of Criminal
6 Procedure, is amended to read as follows:

7 Art. 18.20. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL,
8 OR ELECTRONIC COMMUNICATIONS.

9 SECTION 5. Section 4, Article 18.20, Code of Criminal
10 Procedure, is amended to read as follows:

11 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE
12 AUTHORIZED. A judge of competent jurisdiction may issue an order
13 authorizing interception of wire, oral, or electronic
14 communications only if the prosecutor applying for the order shows
15 probable cause to believe that the interception will provide
16 evidence of the commission of:

17 (1) a felony under Section 19.02, 19.03, or 43.26,
18 Penal Code;

19 (2) a felony under:

20 (A) Chapter 481, Health and Safety Code, other
21 than felony possession of marihuana;

22 (B) Section 485.032 [~~485.033~~], Health and Safety
23 Code; or

24 (C) Chapter 483, Health and Safety Code;

25 (3) an offense under Section 20.03 or 20.04, Penal
26 Code;

27 (4) an offense under Chapter 20A, Penal Code;

1 (5) an offense under Chapter 34, Penal Code, if the
2 criminal activity giving rise to the proceeds involves the
3 commission of an offense under Title 5, Penal Code, or an offense
4 under federal law or the laws of another state containing elements
5 that are substantially similar to the elements of an offense under
6 Title 5; [~~or~~]

7 (6) an offense under Section 38.11, Penal Code; or

8 (7) an attempt, conspiracy, or solicitation to commit
9 an offense listed in this section.

10 SECTION 6. Section 5, Article 18.20, Code of Criminal
11 Procedure, is amended by amending Subsection (a) and adding
12 Subsections (c) and (d) to read as follows:

13 (a) Except as otherwise provided by this section and
14 Sections [~~Section~~] 8A and 8B, only the Department of Public Safety
15 is authorized by this article to own, possess, install, operate, or
16 monitor an electronic, mechanical, or other device. The Department
17 of Public Safety may be assisted by an investigative or law
18 enforcement officer or other person in the operation and monitoring
19 of an interception of wire, oral, or electronic communications,
20 provided that the officer or other person:

21 (1) is designated by the director for that purpose;

22 and

23 (2) acts in the presence and under the direction of a
24 commissioned officer of the Department of Public Safety.

25 (c) The Texas Department of Criminal Justice may own
26 electronic, mechanical, or other devices for a use or purpose
27 authorized by Section 500.008, Government Code, and the inspector

1 general of the Texas Department of Criminal Justice, a commissioned
2 officer of that office, or another person acting in the presence and
3 under the direction of a commissioned officer of that office may
4 possess, install, operate, or monitor those devices as provided by
5 Section 500.008.

6 (d) The Texas Youth Commission may own electronic,
7 mechanical, or other devices for a use or purpose authorized by
8 Section 61.0455, Human Resources Code, and the inspector general of
9 the Texas Youth Commission, a commissioned officer of that office,
10 or another person acting in the presence and under the direction of
11 a commissioned officer of that office may possess, install,
12 operate, or monitor those devices as provided by Section 61.0455.

13 SECTION 7. Article 18.20, Code of Criminal Procedure, is
14 amended by adding Section 8B to read as follows:

15 Sec. 8B. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS
16 COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION FACILITY. (a)
17 In this section, "correctional facility" has the meaning assigned
18 by Section 39.04(e), Penal Code.

19 (b) Notwithstanding any other provision of this article or
20 Article 18.21, the office of the inspector general of the Texas
21 Department of Criminal Justice may:

22 (1) without a warrant, use electronic, mechanical, or
23 other devices to detect the presence or use of a cellular telephone
24 or other wireless communications device in a correctional facility;

25 (2) without a warrant, intercept, monitor, detect, or,
26 as authorized by applicable federal laws and regulations, prevent
27 the transmission of any communication transmitted through the use

1 of a cellular telephone or other wireless communications device in
2 a correctional facility; and

3 (3) use, to the extent authorized by law, any
4 information obtained under Subdivision (2), including the contents
5 of an intercepted communication, in any criminal or civil
6 proceeding before a court or other governmental agency or entity.

7 (c) Not later than the 30th day after the date on which the
8 office of the inspector general uses an electronic, mechanical, or
9 other device under Subsection (b), the inspector general shall
10 report the use of the device to:

11 (1) a prosecutor with jurisdiction in the county in
12 which the device was used; or

13 (2) the special prosecution unit established under
14 Subchapter E, Chapter 41, Government Code, if that unit has
15 jurisdiction in the county in which the device was used.

16 (d) When using an electronic, mechanical, or other device
17 under Subsection (b), the office of the inspector general shall
18 minimize the impact of the device on any communication that is not
19 reasonably related to the detection of the presence or use of a
20 cellular telephone or other wireless communications device in a
21 correctional facility.

22 (e) A person confined in a correctional facility does not
23 have an expectation of privacy with respect to the possession or use
24 of a cellular telephone or other wireless communications device
25 located on the premises of the facility. The person who is
26 confined, and any person with whom that person communicates through
27 the use of a cellular telephone or other wireless communications

1 device, does not have an expectation of privacy with respect to the
2 contents of any communication transmitted by the cellular telephone
3 or wireless communications device.

4 SECTION 8. Section 17, Article 18.20, Code of Criminal
5 Procedure, is amended to read as follows:

6 Sec. 17. NONAPPLICABILITY. This article does not apply to
7 conduct described as an affirmative defense under Section 16.02(c),
8 Penal Code, except as otherwise specifically provided by that
9 section.

10 SECTION 9. Chapter 500, Government Code, is amended by
11 adding Section 500.008 to read as follows:

12 Sec. 500.008. DETECTION AND MONITORING OF CELLULAR
13 TELEPHONES. (a) The department may own and the office of inspector
14 general may possess, install, operate, or monitor an electronic,
15 mechanical, or other device, as defined by Article 18.20, Code of
16 Criminal Procedure.

17 (b) The inspector general shall designate in writing the
18 commissioned officers of the office of inspector general who are
19 authorized to possess, install, operate, and monitor electronic,
20 mechanical, or other devices for the department.

21 (c) An investigative or law enforcement officer or other
22 person, on request of the office of inspector general, may assist
23 the office in the operation and monitoring of an interception of
24 wire, oral, or electronic communications if the investigative or
25 law enforcement officer or other person:

26 (1) is designated by the executive director for that
27 purpose; and

1 (2) acts in the presence and under the direction of a
2 commissioned officer of the inspector general.

3 SECTION 10. Subchapter C, Chapter 61, Human Resources Code,
4 is amended by adding Section 61.0455 to read as follows:

5 Sec. 61.0455. DETECTION AND MONITORING OF CELLULAR
6 TELEPHONES. (a) The commission may own and the office of the
7 inspector general may possess, install, operate, or monitor an
8 electronic, mechanical, or other device, as defined by Article
9 18.20, Code of Criminal Procedure.

10 (b) The inspector general shall designate in writing the
11 commissioned officers of the office of inspector general who are
12 authorized to possess, install, operate, and monitor electronic,
13 mechanical, or other devices for the commission.

14 (c) An investigative or law enforcement officer or other
15 person, on request of the office of inspector general, may assist
16 the office in the operation and monitoring of an interception of
17 wire, oral, or electronic communications if the investigative or
18 law enforcement officer or other person:

19 (1) is designated by the executive commissioner for
20 that purpose; and

21 (2) acts in the presence and under the direction of a
22 commissioned officer of the inspector general.

23 SECTION 11. Section 16.02, Penal Code, is amended by adding
24 Subsection (e-1) to read as follows:

25 (e-1) It is a defense to prosecution under Subsection (d)(1)
26 that the electronic, mechanical, or other device is possessed by a
27 person authorized to possess the device under Section 500.008,

1 Government Code, or Section 61.0455, Human Resources Code.

2 SECTION 12. The changes in law made by this Act with respect
3 to Sections 16.02 and 38.11, Penal Code, apply only to an offense
4 committed on or after the effective date of this Act. An offense
5 committed before the effective date of this Act is governed by the
6 law in effect when the offense was committed, and the former law is
7 continued in effect for that purpose. For purposes of this section,
8 an offense was committed before the effective date of this Act if
9 any element of the offense occurred before that date.

10 SECTION 13. This Act takes effect September 1, 2009.