

By: Madden

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:

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

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

21 (3) a cellular telephone or other wireless
22 communications device or a component of one of those devices,
23 cigarette, tobacco product, or money to an inmate of a correctional
24 facility operated by or under contract with the Texas Department of

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

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

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

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

15 (B) places restrictions on:

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

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

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

27 SECTION 2. Section 38.11, Penal Code, is amended by adding

1 Subsection (k) to read as follows:

2 (k) A person commits an offense if, with the intent to
3 provide to or make a cellular telephone or other wireless
4 communications device or a component of one of those devices
5 available for use by an inmate of a correctional facility operated
6 by or under contract with the Texas Department of Criminal Justice
7 or by a person in the custody of the Texas Youth Commission or
8 another secure correctional facility for juveniles or a secure
9 detention facility for juveniles, the person:

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

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

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

20 SECTION 3. Section 4, Article 18.20, Code of Criminal
21 Procedure, is amended to read as follows:

22 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE
23 AUTHORIZED. A judge of competent jurisdiction may issue an order
24 authorizing interception of wire, oral, or electronic
25 communications only if the prosecutor applying for the order shows
26 probable cause to believe that the interception will provide
27 evidence of the commission of:

- 1 (1) a felony under Section 19.02, 19.03, or 43.26,
2 Penal Code;
- 3 (2) a felony under:
- 4 (A) Chapter 481, Health and Safety Code, other
5 than felony possession of marihuana;
- 6 (B) Section 485.032 [~~485.033~~], Health and Safety
7 Code; or
- 8 (C) Chapter 483, Health and Safety Code;
- 9 (3) an offense under Section 20.03 or 20.04, Penal
10 Code;
- 11 (4) an offense under Chapter 20A, Penal Code;
- 12 (5) an offense under Chapter 34, Penal Code, if the
13 criminal activity giving rise to the proceeds involves the
14 commission of an offense under Title 5, Penal Code, or an offense
15 under federal law or the laws of another state containing elements
16 that are substantially similar to the elements of an offense under
17 Title 5; [~~or~~]
- 18 (6) an offense under Section 38.11, Penal Code; or
- 19 (7) an attempt, conspiracy, or solicitation to commit
20 an offense listed in this section.

21 SECTION 4. Section 5, Article 18.20, Code of Criminal
22 Procedure, is amended by amending Subsection (a) and adding
23 Subsections (c) and (d) to read as follows:

24 (a) Except as otherwise provided by this section and Section
25 8A, only the Department of Public Safety is authorized by this
26 article to own, possess, install, operate, or monitor an
27 electronic, mechanical, or other device. The Department of Public

1 Safety may be assisted by an investigative or law enforcement
2 officer or other person in the operation and monitoring of an
3 interception of wire, oral, or electronic communications, provided
4 that the officer or other person:

5 (1) is designated by the director for that purpose;
6 and

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

9 (c) The Texas Department of Criminal Justice may own
10 electronic, mechanical, or other devices for a use or purpose
11 authorized by Section 500.008, Government Code, and the inspector
12 general of the Texas Department of Criminal Justice, a commissioned
13 officer of that office, or another person acting in the presence and
14 under the direction of a commissioned officer of that office may
15 possess, install, operate, or monitor those devices as provided by
16 Section 500.008.

17 (d) The Texas Youth Commission may own electronic,
18 mechanical, or other devices for a use or purpose authorized by
19 Section 61.0455, Human Resources Code, and the inspector general of
20 the Texas Youth Commission, a commissioned officer of that office,
21 or another person acting in the presence and under the direction of
22 a commissioned officer of that office may possess, install,
23 operate, or monitor those devices as provided by Section 61.0455.

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

26 Sec. 17. NONAPPLICABILITY. This article does not apply to
27 conduct described as an affirmative defense under Section 16.02(c),

1 Penal Code, except as otherwise specifically provided by that
2 section.

3 SECTION 6. Chapter 500, Government Code, is amended by
4 adding Section 500.008 to read as follows:

5 Sec. 500.008. DETECTION AND MONITORING OF CELLULAR
6 TELEPHONES. (a) The department may own and the office of inspector
7 general may possess, install, operate, or monitor an electronic,
8 mechanical, or other device, as defined by Article 18.20, Code of
9 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 department.

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 director for that
20 purpose; and

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

23 SECTION 7. Subchapter C, Chapter 61, Human Resources Code,
24 is amended by adding Section 61.0455 to read as follows:

25 Sec. 61.0455. DETECTION AND MONITORING OF CELLULAR
26 TELEPHONES. (a) The commission may own and the office of the
27 inspector general may possess, install, operate, or monitor an

1 electronic, mechanical, or other device, as defined by Article
2 18.20, Code of Criminal Procedure.

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

7 (c) An investigative or law enforcement officer or other
8 person, on request of the office of inspector general, may assist
9 the office in the operation and monitoring of an interception of
10 wire, oral, or electronic communications if the investigative or
11 law enforcement officer or other person:

12 (1) is designated by the executive commissioner for
13 that purpose; and

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

16 SECTION 8. Section 16.02, Penal Code, is amended by adding
17 Subsection (e-1) to read as follows:

18 (e-1) It is a defense to prosecution under Subsection (d)(1)
19 that the electronic, mechanical, or other device is possessed by a
20 person authorized to possess the device under Section 500.008,
21 Government Code, or Section 61.0455, Human Resources Code.

22 SECTION 9. The changes in law made by this Act with respect
23 to Sections 16.02 and 38.11, Penal Code, apply only to an offense
24 committed on or after the effective date of this Act. An offense
25 committed before the effective date of this Act is governed by the
26 law in effect when the offense was committed, and the former law is
27 continued in effect for that purpose. For purposes of this section,

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1 an offense was committed before the effective date of this Act if
2 any element of the offense occurred before that date.

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