

AN ACT

relating to the offense of prohibited substances and items in  
correctional facilities.

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

SECTION 1. 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, is reenacted and amended to  
read as follows:

Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN ~~[ADULT OR  
JUVENILE]~~ CORRECTIONAL ~~[OR DETENTION]~~ FACILITY ~~[OR ON PROPERTY OF  
TEXAS DEPARTMENT OF CRIMINAL JUSTICE OR TEXAS YOUTH COMMISSION]~~.

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

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

(2) a deadly weapon to ~~[an inmate of a correctional  
facility or to]~~ a person in the custody of a ~~[secure]~~ correctional  
facility ~~[or secure detention facility for juveniles]~~;

(3) a cellular telephone or other wireless  
communications device or a component of one of those devices~~[,~~

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

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

10 (5) a cigarette or tobacco product to a person  
11 confined in a correctional facility, except that if the facility is  
12 a local jail regulated by the Commission on Jail Standards, the  
13 person commits an offense only if [~~and in~~] providing the cigarette  
14 or tobacco product [~~the person~~] violates a rule or regulation  
15 adopted by the sheriff or jail administrator that:

16 (A) prohibits the possession of a cigarette or  
17 tobacco product by a person [~~an inmate~~] confined in the jail; or

18 (B) places restrictions on:

19 (i) the possession of a cigarette or  
20 tobacco product by a person [~~an inmate~~] confined in the jail; or

21 (ii) the manner in which a cigarette or  
22 tobacco product may be provided to a person [~~an inmate~~] confined in  
23 the jail.

24 (b) A person commits an offense if the person takes an  
25 alcoholic beverage, controlled substance, or dangerous drug into a  
26 correctional facility [~~or a secure correctional facility or secure~~  
27 ~~detention facility for juveniles, except for delivery to a facility~~

1 ~~warehouse, pharmacy, or physician].~~

2 (c) A person commits an offense if the person takes a  
3 controlled substance or dangerous drug on property owned, used, or  
4 controlled by a correctional facility ~~[the Texas Department of~~  
5 ~~Criminal Justice, the Texas Youth Commission, or a secure~~  
6 ~~correctional facility or secure detention facility for juveniles,~~  
7 ~~except for delivery to a warehouse, pharmacy, or physician on~~  
8 ~~property owned, used, or controlled by the department, the~~  
9 ~~commission, or the facility].~~

10 (d) A person commits an offense if the person:

11 (1) possesses a controlled substance or dangerous drug  
12 while in a correctional facility or ~~[~~

13 ~~[(A)]~~ on property owned, used, or controlled by  
14 ~~[the Texas Department of Criminal Justice, the Texas Youth~~  
15 ~~Commission, or]~~ a ~~[secure]~~ correctional facility ~~[or secure~~  
16 ~~detention facility for juveniles, or~~

17 ~~[(B) in a correctional facility or a secure~~  
18 ~~correctional facility or secure detention facility for juveniles];~~

19 or

20 (2) possesses a deadly weapon while in a correctional  
21 facility ~~[or in a secure correctional facility or secure detention~~  
22 ~~facility for juveniles].~~

23 (e) It is an affirmative defense to prosecution under  
24 Subsection (b), (c), or (d)(1) ~~[of this section]~~ that the person  
25 possessed the alcoholic beverage, controlled substance, or  
26 dangerous drug pursuant to a prescription issued by a practitioner  
27 or while delivering the beverage, substance, or drug to a

warehouse, pharmacy, or practitioner ~~[physician]~~ on property owned, used, or controlled by the ~~[department, the Texas Youth Commission, or by the operator of a secure]~~ correctional facility ~~[or secure detention facility for juveniles]~~. It is an affirmative defense to prosecution under Subsection (d)(2) ~~[of this section]~~ that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility who is authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

(1) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Component" means 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.

1           (6) "Correctional facility" means:

2                   (A) any place described by Section  
3 1.07(a)(14)(A), (B), or (C); or

4                   (B) a secure correctional facility or secure  
5 detention facility, as defined [~~"Secure correctional facility" and~~  
6 ~~"secure detention facility" have the meanings assigned~~] by Section  
7 51.02, Family Code.

8           (g) An offense under this section is a felony of the third  
9 degree.

10           (h) Notwithstanding Section 15.01(d), if a person commits  
11 the offense of criminal attempt to commit an offense under  
12 Subsection (a), ~~[or]~~ (b), or (c), the offense committed under  
13 Section 15.01 is a felony of the third degree.

14           (i) It is an affirmative defense to prosecution under  
15 Subsection (b) that the actor:

16                   (1) is a duly authorized member of the clergy with  
17 rights and privileges granted by an ordaining authority that  
18 includes administration of a religious ritual or ceremony requiring  
19 the presence or consumption of an alcoholic beverage; and

20                   (2) takes four ounces or less of an alcoholic beverage  
21 into the correctional facility [~~or the secure correctional facility~~  
22 ~~or secure detention facility for juveniles~~] and personally consumes  
23 all of the alcoholic beverage or departs from the facility with any  
24 portion of the beverage not consumed.

25           (j) A person commits an offense if the person, while  
26 confined in [~~an inmate of~~] a correctional facility, [~~operated by or~~  
27 ~~under contract with the Texas Department of Criminal Justice or~~

1 ~~while in the custody of a secure correctional facility or secure~~  
2 ~~detention facility for juveniles]~~ possesses a cellular telephone or  
3 other wireless communications device or a component of one of those  
4 devices.

5 (k) A person commits an offense if, with the intent to  
6 provide to or make a cellular telephone or other wireless  
7 communications device or a component of one of those devices  
8 available for use by a person in the custody of a correctional  
9 facility, 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 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 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 2. The heading to Article 18.20, Code of Criminal  
21 Procedure, is amended to read as follows:

22 Art. 18.20. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL,  
23 OR ELECTRONIC COMMUNICATIONS.

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

26 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE  
27 AUTHORIZED. A judge of competent jurisdiction may issue an order

1 authorizing interception of wire, oral, or electronic  
2 communications only if the prosecutor applying for the order shows  
3 probable cause to believe that the interception will provide  
4 evidence of the commission of:

5 (1) a felony under Section 19.02, 19.03, or 43.26,  
6 Penal Code;

7 (2) a felony under:

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

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

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

13 (3) an offense under Section 20.03 or 20.04, Penal  
14 Code;

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

16 (5) an offense under Chapter 34, Penal Code, if the  
17 criminal activity giving rise to the proceeds involves the  
18 commission of an offense under Title 5, Penal Code, or an offense  
19 under federal law or the laws of another state containing elements  
20 that are substantially similar to the elements of an offense under  
21 Title 5; [~~or~~]

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

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

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

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

9                   (1) is designated by the director for that purpose;  
10 and

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

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

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



SECTION 5. Article 18.20, Code of Criminal Procedure, is amended by adding Section 8B to read as follows:

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

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

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

(2) without a warrant, intercept, monitor, detect, or, as authorized by applicable federal laws and regulations, prevent the transmission of any communication transmitted through the use of a cellular telephone or other wireless communications device in a correctional facility; and

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

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

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

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

4           (d) When using an electronic, mechanical, or other device  
5 under Subsection (b), the office of the inspector general shall  
6 minimize the impact of the device on any communication that is not  
7 reasonably related to the detection of the presence or use of a  
8 cellular telephone or other wireless communications device in a  
9 correctional facility.

10          (e) A person confined in a correctional facility does not  
11 have an expectation of privacy with respect to the possession or use  
12 of a cellular telephone or other wireless communications device  
13 located on the premises of the facility. The person who is  
14 confined, and any person with whom that person communicates through  
15 the use of a cellular telephone or other wireless communications  
16 device, does not have an expectation of privacy with respect to the  
17 contents of any communication transmitted by the cellular telephone  
18 or wireless communications device.

19          SECTION 6. Section 17, Article 18.20, Code of Criminal  
20 Procedure, is amended to read as follows:

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

25          SECTION 7. Chapter 500, Government Code, is amended by  
26 adding Section 500.008 to read as follows:

27          Sec. 500.008. DETECTION AND MONITORING OF CELLULAR

1 TELEPHONES. (a) The department may own and the office of inspector  
2 general may possess, install, operate, or monitor an electronic,  
3 mechanical, or other device, as defined by Article 18.20, Code of  
4 Criminal Procedure.

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

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

14 (1) is designated by the executive director for that  
15 purpose; and

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

18 SECTION 8. Subchapter C, Chapter 61, Human Resources Code,  
19 is amended by adding Section 61.0455 to read as follows:

20 Sec. 61.0455. DETECTION AND MONITORING OF CELLULAR  
21 TELEPHONES. (a) The commission may own and the office of the  
22 inspector general may possess, install, operate, or monitor an  
23 electronic, mechanical, or other device, as defined by Article  
24 18.20, Code of Criminal Procedure.

25 (b) The inspector general shall designate in writing the  
26 commissioned officers of the office of inspector general who are  
27 authorized to possess, install, operate, and monitor electronic,

1 mechanical, or other devices for the commission.

2 (c) An investigative or law enforcement officer or other  
3 person, on request of the office of inspector general, may assist  
4 the office in the operation and monitoring of an interception of  
5 wire, oral, or electronic communications if the investigative or  
6 law enforcement officer or other person:

7 (1) is designated by the executive commissioner for  
8 that purpose; and

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

11 SECTION 9. Section 16.02, Penal Code, is amended by adding  
12 Subsection (e-1) to read as follows:

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

17 SECTION 10. The changes in law made by this Act with respect  
18 to Sections 16.02 and 38.11, Penal Code, apply only to an offense  
19 committed on or after the effective date of this Act. An offense  
20 committed before the effective date of this Act is governed by the  
21 law in effect when the offense was committed, and the former law is  
22 continued in effect for that purpose. For purposes of this section,  
23 an offense was committed before the effective date of this Act if  
24 any element of the offense occurred before that date.

25 SECTION 11. This Act takes effect September 1, 2009.

H.B. No. 3228

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3228 was passed by the House on May 4, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3228 on May 29, 2009, by the following vote: Yeas 138, Nays 1, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3228 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor