

By: Madden

H.B. No. 3228

Substitute the following for H.B. No. 3228:

By: McReynolds

C.S.H.B. No. 3228

A BILL TO BE ENTITLED

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:

(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~~[,~~
~~cigarette, tobacco product, or money]~~ to a person in the custody ~~[an~~

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

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

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

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

17 (B) places restrictions on:

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

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

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

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

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

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

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

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

18 or

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

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

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

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

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

(h) Notwithstanding Section 15.01(d), if a person commits

1 the offense of criminal attempt to commit an offense under
2 Subsection (a), ~~or~~ (b), or (c), the offense committed under
3 Section 15.01 is a felony of the third degree.

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

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

10 (2) takes four ounces or less of an alcoholic beverage
11 into the correctional facility ~~[or the secure correctional facility~~
12 ~~or secure detention facility for juveniles]~~ and personally consumes
13 all of the alcoholic beverage or departs from the facility with any
14 portion of the beverage not consumed.

15 (j) A person commits an offense if the person while confined
16 in ~~[an inmate of]~~ a correctional facility ~~[operated by or under~~
17 ~~contract with the Texas Department of Criminal Justice or while in~~
18 ~~the custody of a secure correctional facility or secure detention~~
19 ~~facility for juveniles]~~ possesses a cellular telephone or other
20 wireless communications device or a component of one of those
21 devices.

22 SECTION 2. The change in law made by this Act applies only
23 to an offense committed on or after the effective date of this Act.
24 An offense committed before the effective date of this Act is
25 governed by the law in effect when the offense was committed, and
26 the former law is continued in effect for that purpose. For
27 purposes of this section, an offense was committed before the

C.S.H.B. No. 3228

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

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