

SUBJECT: Enabling the inspector general of TDCJ to issue administrative subpoenas

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Madden, Hochberg, McReynolds, Haggerty, Jones

0 nays

2 absent — Dunnam, Oliveira

WITNESSES: For — None

Against — None

On — John Moriarty, TDCJ - Office of the Investigator General

BACKGROUND: Penal Code, sec. 38.11 governs offenses related to possessing contraband in a corrections facility or providing contraband to an inmate. Under sec. 38.11(j), it is a criminal offense for an offender to possess a cell phone in a correctional facility. Providing a cell phone to an inmate is an offense under 38.11(a)(3).

DIGEST: CSHB 428 would add Government Code, sec. 493.0191 to allow the OIG of TDCJ to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel the carrier or service to produce records pertinent to the carrier or service's customers or other service users. These records would have to be related to a criminal investigation of a potential escape, the possession or provision of contraband in a secure correctional facility, or other offense involving TDCJ inmates or operations.

CSHB 428 would define "communications common carrier" as a person that provides commercial telephone services or a provider that bills customers for those services, regardless of the technology used to provide the service. Electronic communications services would be defined as a service that enables users to send or receive wire or electronic communications.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 428 would grant the Texas Department of Criminal Justice (TDCJ) limited subpoena authority to gather evidence related to illegal use of cell phones by prison inmates. Last year, TDCJ seized more than 300 cell phones from offenders. In order to determine the origin of the confiscated phones, TDCJ must obtain subscriber information and service information. Communications companies, property protecting the privacy of their customers, will surrender this information only if they are subpoenaed. Currently, TDCJ's Office of the Inspector General (OIG) must convince a prosecutor to bring the matter before a grand jury, which decides whether to allow the issuance of the subpoena. OIG also may instigate full criminal proceedings and go through the district court to obtain a subpoena.

Administrative subpoenas currently are authorized for some state agencies to aid in gathering evidence. These include inspectors general of the Health and Human Services Commission and various licensing agencies, such as the Texas Medical Board and the boards that regulate engineers, real estate agents, and plumbers, among others. Administrative subpoenas are issued on the authority of the agency empowered to use them, but they also are subject to judicial review in order to prevent abuse.

**OPPONENTS
SAY:**

No apparent opposition.