

SUBJECT: Creating a third-degree felony for giving tobacco to an inmate

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Haggerty, Farrar, Allen, Hodge, Ellis, Hopson, Isett

0 nays

2 absent — Gray, Ritter

WITNESSES: For — Willis H. Gibson, Corrections Corporation of America

Against — None

BACKGROUND: Certain substances are illegal in correctional facilities or on the property of the Texas Department of Criminal Justice (TDCJ). Penal Code, sec. 38.11 establishes a third-degree felony offense (punishable by two to 10 years in prison and an optional fine of up to \$10,000) for a person who:

- ! provides an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility, except on the prescription of a physician;
- ! takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility or onto property owned, used, or controlled by TDCJ, except for delivery to a warehouse, pharmacy, or physician; or
- ! possesses a controlled substance or dangerous drug while in a correctional facility or on property owned, used, or controlled by TDCJ, unless possession is pursuant to a prescription issued by a practitioner or while delivering the substance or drug to a warehouse, pharmacy, or physician.

It is an affirmative defense to taking an alcoholic beverage into a correctional facility if the actor is a clergy person with ordained rights and privileges that include administration of a religious ceremony that requires the presence or consumption of alcohol and the clergy person takes four ounces or less of an alcoholic beverage into the facility and personally consumes all of it or leaves the facility with any portion of the beverage not consumed.

Tax Code, sec. 154.001 defines “cigarette” as a roll for smoking that is made of tobacco or tobacco mixed with another ingredient and is wrapped or covered with a material other than tobacco and that is not a cigar. Sec. 155.001 defines “tobacco product” as:

- ! a cigar;
- ! smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;
- ! chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;
- ! snuff or other preparations of pulverized tobacco; or
- ! an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

DIGEST: CSHB 287 would make it a third-degree felony offense to provide a cigarette or tobacco product to an inmate of a correctional facility operated by or under contract with TDCJ. “Cigarette” and “tobacco product” would have the meanings assigned by the Tax Code.

The bill would take effect September 1, 2001.

SUPPORTERS SAY: CSHB 287 would reduce the trafficking of cigarettes and tobacco products in the TDCJ system by creating a severe penalty for giving tobacco to an inmate. Tobacco products are used as a form of currency in the prison system, and their presence reduces the level of control TDCJ can maintain over the prison population.

This bill would follow precedent already set in Texas law. For example, although it is legal to possess alcohol outside of prison, it is a third-degree felony to provide an alcoholic beverage to an inmate. TDCJ policy prohibits inmates from possessing tobacco, but that policy does not have the force of the alcoholic beverage law. The policy only takes “good time” away from inmates and does not deter the people who give them tobacco products. This bill would give TDCJ real power to keep tobacco out of prisons.

CSHB 287 would stop inmates’ families and friends from providing them with tobacco. Currently, people outside of the system introduce tobacco into

prisons with impunity, often by throwing materials to inmates over prison walls or fences. When these people are caught, they can be reprimanded but not prosecuted.

CSHB 287 would reduce the incentive for correctional officers to supplement their incomes by selling cigarettes to inmates. By one estimate, a \$1 package of tobacco can be made into 60 cigarettes that sell for \$1.50 to \$2 each behind bars, for a total profit to the seller of \$89 to \$119 per package. From January 1998 to November 2000, about 100 correctional officers were fired, written up, or put on probation for providing tobacco to inmates. During that same period, TDCJ logged more than 9,500 cases of offenders possessing tobacco or tobacco-related products.

OPPONENTS
SAY:

CSHB 287 would not eliminate tobacco products in the prison system. Most tobacco comes not from inmates' families and friends tossing it over prison walls, but from organized gangs and other crime groups that have cases of tobacco and illegal drugs shipped into prisons and unloaded by gang members inside or by unsuspecting inmates on the shipping docks. To eliminate tobacco in prisons, TDCJ must implement administrative policies to crack down on its entry. One warden virtually eliminated tobacco on his unit by having correctional officers searched for tobacco when they entered the prison and by requiring correctional officers, instead of inmates, to unload and search shipments to the prison.

This bill would create an unreasonably harsh penalty for giving tobacco to an inmate. If an inmate serving a two-year sentence in a state jail for a nonviolent offense gave his cellmate a plug of chewing tobacco, he could be sentenced to two to 10 years in prison. He would be moved to TDCJ's institutional division to serve time with hardened, violent offenders and would lose his ability to participate in beneficial rehabilitative and educational programs. In addition, his further incarceration — for something that is legal outside of prison walls — would keep him from being a contributing taxpayer and would cost the state about \$40.65 a day, plus the costs of any social services benefits to support a family reliant on his income.

CSHB 287 could fill up Texas prisons with nonviolent offenders who provided a substance that is legal outside of a correctional environment.

Texas already leads the nation in incarcerating its residents. According to the Criminal Justice Policy Council, 163,190 Texans were locked up under state jurisdiction in 1999, and one in 18 adults in Texas was under state or local criminal justice jurisdiction. This bill would crowd Texas prisons further by locking up families and friends of inmates and correctional officers who gave offenders cigarettes.

Currently, gang members in prison extort other inmates for cigarettes and sometimes will set up inmates they do not like by planting tobacco in their cells. If CSHB 287 were enacted, inmates that already were being victimized and were losing good time could face an additional felony charge and two to 10 more years in prison.

NOTES:

HB 287 as filed would have created an offense for providing a tobacco product to an inmate but would not have specified cigarettes.