

SUBJECT: Affirmative defense for clergy taking alcohol in prisons for religious ceremony

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Haggerty, Allen, Culberson, Ellis, Gray, Lengefeld, Longoria
0 nays
2 absent — Staples, Farrar

WITNESSES: For — Doots DuFour, Diocese of Austin
Against — None

BACKGROUND: It is third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to take an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility, unless it is being delivered to a correctional facility warehouse, pharmacy, or physician.

It is also a third degree felony to possess a controlled substance or dangerous drug while on Texas Department of Criminal Justice (TDCJ) property and to provide an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a correctional facility, unless it is prescribed by a physician.

DIGEST: HB 2593 would provide an affirmative defense to prosecution for the offense of taking an alcoholic beverage, controlled substance, or other dangerous drug into correctional facilities if:

- ! the person was an authorized member of the clergy with rights and privileges granted by an ordaining authority whose religious ritual or ceremony required the presence or consumption of alcohol; and
- ! the person took no more than four ounces of alcohol into the facility and consumed all of it or left with any portion not consumed.

HB 2593 would take effect September 1, 1999.

SUPPORTERS
SAY:

HB 2593 would authorize clergy whose ceremonies require the use of alcohol to take a small amount into correctional facilities, under narrow, specified conditions. This would allow Roman Catholic priests, for example, to bring wine into a prison to celebrate mass for inmates. If a clergy member were charged with illegally taking alcohol into a prison, HB 2593 would give them an affirmative defense to prosecution.

Although prison officials sometimes allow priests to bring wine into prisons to celebrate mass, HB 2593 would ensure that these priests would not commit a felony. This would allow priests to minister to offenders without breaking the law, an important symbolic change for clergy who may be trying to teach inmates about upholding the law, morals, and ethics.

HB 2593 also would help prevent situations in which a zealous official may question or deny entry to a priest trying to enter a facility with wine for mass. Since the bill is restricted to authorized clergy, TDCJ could check the credentials of persons claiming that HB 2593 applied to them.

It would remain a third-degree felony to provide an alcoholic beverage to inmates of correctional facilities. HB 2593 would address only the offense of taking alcohol into a correctional facility and ensure that only a small amount of wine, four ounces or less, would be allowed in and that it would be consumed by the clergy or taken with them from the facility.

HB 2593 would not infringe on TDCJ's authority to regulate contraband, including alcohol. It would not give anyone – including clergy – a *right* to bring alcohol into a prison. The agency still could deny admittance to or eject anyone caught with alcohol and still could confiscate alcohol found in prisons.

The bill would not open a door to claims by inmates that they deserve special treatment due to their religion because the bill would apply only to authorized clergy who met certain requirements, not to inmates. Inmates already make these claims, which would be handled through TDCJ's in-place procedures and regulations about religious practices.

An affirmative defense is the appropriate legal mechanism to cover situations anticipated by HB 2593. The Penal Code already has other affirmative defenses to the laws concerning possessing alcohol or drugs on TDCJ

property so that persons can deliver controlled substances to warehouses, pharmacies, or physicians. While prosecutions of clergy taking ceremonial wine into a prison for a mass most likely would be rare, it would be easy to meet the affirmative defense's criteria. For example, a person would have to prove he is a priest, something easily done by a bona fide clergyman.

OPPONENTS
SAY:

A better approach to dealing with clergy members bringing alcohol into prisons for religious purposes would be to provide an "exception" to prosecution rather than an affirmative defense. Exceptions carry slightly different ramifications, requiring prosecutors to specify in the formal charge that the person does not fall under the exceptions. Law enforcement officers still could arrest someone even when they know an affirmative defense may be applicable, forcing the person later to raise the defense.

HB 2593 may not adequately address the problem of clergy being hassled by over zealous TDCJ officials who still could deny them entry into a facility even if they were carrying a small amount of wine for religious purposes.