

**SUBJECT:** Authorizing the TDCJ inspector general to issue administrative subpoenas

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 9 ayes — McReynolds, Madden, Dutton, England, Marquez, Martinez, S. Miller, Ortiz, Sheffield

0 nays

1 present not voting — Hodge

1 absent — Kolkhorst

**WITNESSES:** For — Beverly Elam

Against — None

On — Gina DeBottis, Special Prosecution Unit

**BACKGROUND:** Penal Code, sec. 38.11 creates criminal offenses for providing contraband to persons in correctional facilities and for possessing contraband in the facilities. Under sec. 38.11(j), it is a crime 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 1728 would allow the inspector general of the Texas Department of Criminal Justice (TDCJ) to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel them to produce certain records pertinent to their customers or users. These records would have to be material to a criminal investigation of an escape, a potential escape, or the possession or provision of contraband in a correctional facility or on TDCJ property.

HB 1728 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 for 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, 2009.

**SUPPORTERS  
SAY:**

CSHB 1728 would grant TDCJ's inspector general limited administrative subpoena authority to gather evidence from telecommunications companies related to prison escape and contraband crimes involving cell phones so that these cases could proceed more efficiently.

The authority in CSHB 1728 is justified given the public safety and security issues involved in these cases. There has been heightened concern about the problem of contraband cell phones in prisons since October 2008 when a death row inmate was caught with a cell phone. In February alone, TDCJ found 115 contraband cell phones.

To investigate these cases, the inspector general often needs to determine the origin of the contraband phones and information, such as who paid the cell phone bill and whom the offender called. Communications companies, properly protecting the privacy of their customers, will surrender this information only if they are subpoenaed. In 2007, TDCJ's inspector general made about 260 subpoena requests for information from telecommunications companies relating to contraband cell phones and in 2008, about 840 requests.

Currently, the inspector general must have a prosecutor approve requests for investigatory subpoenas in these cases. The inspector general usually does this through the Special Prosecution Unit, which prosecutes crimes occurring in prison units. However, this process can be cumbersome and inefficient, given the serious concerns with contraband cell phones and the need to move quickly, especially when the offense involves escape.

Numerous safeguards would ensure the authority granted to the inspector general would not be abused. The circumstances in which the inspector could use the subpoena power would be narrow, with the requested records having to be material to an investigation involving only the crimes of escape or those relating to contraband, and they could be issued only to telecommunications companies. The inspector general's office also has internal procedure to ensure the requests meet the law. Abuses or illegal requests could be brought before a court and any evidence gathered challenged.

Administrative subpoenas currently are authorized for some other state agencies to aid in gathering evidence, including various licensing agencies.

**OPPONENTS  
SAY:**

CSHB 1728 is unnecessary. The current process used by TDCJ's inspector general to obtain administrative subpoenas works well. Because of the inspector general's good working relationship with the Special Prosecution Unit and other prosecutors where TDCJ units are located, action is taken quickly on the inspector general's request, and there is no need to remove this extra layer of oversight.

**NOTES:**

The committee substitute removed authority for the inspector general to subpoena records relating to other offenses involving inmates or TDCJ operations and added authority to subpoena records relating to escapes.