

BILL ANALYSIS

Senate Research Center

S.B. 11
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, criminal street gangs have become an increasing problem in Texas. Gang activity has grown in cities and rural areas, and cartel-style gangs based along the border with Mexico have moved into Texas. Dealing with this dangerous problem should be a priority. Currently, Chapter 71 (Organized Crime), Penal Code, establishes penalty increases for certain crimes committed in furtherance of gang activity.

S.B. 11 focuses on a number of issues related to the growth in gang activity in Texas including prevention of youth involvement in gangs, intervention programs to reduce gang involvement, the increase of penalties for certain offenses, and the creation of new offenses focused on deterring illegal gang activity, and the collection of information necessary to deal with the gang problem.

As proposed, S.B. 11 authorizes judges to require consecutive sentencing for certain gang-related offenses; requires gang intervention programs for juveniles adjudicated to have engaged in a gang-related offense; creates a cause of action for affected persons or entities to bring civil law suits against gangs who have caused harm; creates a special unit within the Texas Department of Public Safety to investigate law enforcement corruption related to organized crime and criminal gang activity; and includes other provisions relating to forfeiture of assets, criminal street gang intervention programs, and the creation of offenses of online promotion of a criminal street gang or issuing threats relating to gang membership.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 100B, as follows:

CHAPTER 100B. CRIMINAL STREET GANG LIABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 100B.001. DEFINITIONS. Defines "child," "criminal street gang," "continuously or regularly," "gang activity," "governmental entity," and "parent."

[Reserves Sections 100B.002-100B.050 for expansion.]

SUBCHAPTER B. LIABILITY TO PARENT

Sec. 100B.051. LIABILITY. Provides that a criminal street gang or a member of a criminal street gang is liable to the parent of a child for damages arising from the criminal street gang's or a member of the criminal street gang's recruitment or inducement of the child to become a member of the criminal street gang.

Sec. 100B.052. DAMAGES. (a) Authorizes a plaintiff who prevails in a suit under this chapter to recover economic and noneconomic damages.

(b) Authorizes a plaintiff who prevails in a suit under this chapter to recover exemplary damages and court costs and reasonable attorney's fees in addition to an award under Subsection (a).

[Reserves Sections 100B.053-100B.100 for expansion.]

SUBCHAPTER C. LIABILITY TO GOVERNMENTAL ENTITY

Sec. 100B.101. LIABILITY. Provides that a criminal street gang or a member of a criminal street gang is liable to a governmental entity for certain damages arising from activities of a criminal street gang.

Sec. 100B.102. DAMAGES. (a) Authorizes a governmental entity that prevails in a suit under this chapter to recover economic damages.

(b) Authorizes a governmental entity that prevails in a suit under this chapter to recover exemplary damages and court costs and reasonable attorney's fees in addition to an award under Subsection (a).

[Reserves Sections 100B.103-100B.150 for expansion.]

SUBCHAPTER D. LIABILITY TO NEIGHBORHOOD OR COMMUNITY

Sec. 100B.151. LIABILITY. Provides that a criminal street gang or a member of a criminal street gang is liable to a neighborhood or community injured by a public nuisance described by Subchapter D (Membership in Criminal Street Gang), Chapter 125 (Common and Public Nuisances), arising out of gang activity engaged in by the gang.

Sec. 100B.152. DAMAGES. (a) Authorizes a district, county, or city attorney, the attorney general, or a resident of the state to sue for money damages on behalf of a neighborhood or community injured by a public nuisance described by Subchapter D, Chapter 125.

(b) Authorizes a neighborhood or community that prevails in a suit under this subchapter to recover exemplary damages and court costs and reasonable attorney's fees in addition to an award under Subsection (a).

[Reserves Sections 100B.153-100B.200 for expansion.]

SUBCHAPTER E. EXECUTION ON JUDGMENT

Sec. 100B.201. LEVY ON PROPERTY OF GANG OR MEMBER. Authorizes that the property of the criminal street gang or a member of the street gang be seized in execution on a judgment under this chapter.

SECTION 2. Amends Article 42.01, Code of Criminal Procedure, by adding Section 9, to provide that, in addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0197.

SECTION 3. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0197, as follows:

Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. Requires the judge, in the trial of an offense, on the motion of the attorney representing the state to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the applicable conduct was engaged in as part of the activities of a criminal street gang as defined by Section 71.01 (Definitions), Penal Code.

SECTION 4. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to authorize that conditions of community supervision include, but not be limited to, the required condition

that the defendant avoids persons or places of disreputable or harmful character, including any person convicted of an offense involving or furthering criminal street gang activity. Makes nonsubstantive changes.

SECTION 5. Amends Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, to redefine "contraband."

SECTION 6. Amends Chapter 59, Code of Criminal Procedure, by adding Article 59.011, as follows:

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. Authorizes an attorney representing the state to proceed under either provision if property described by Article 59.01(2)(B)(x) (related to property of any nature that is used or intended to be used in the commission of any offense under Chapter 71 (Organized Crime), Penal Code is subject to forfeiture under this chapter and Article 18.18 (Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and Other Contraband).

SECTION 7. Amends Chapter 54, Family Code, by adding Section 54.0491, as follows:

Sec. 54.0491. GANG-RELATED CONDUCT. (a) Defines "criminal street gang" and "gang-related conduct."

(b) Requires a juvenile court, in a disposition hearing under Section 54.04 (Disposition Hearing) regarding a child who has been adjudicated to have engaged in delinquent conduct that is also gang-related conduct, to order the child to participate in a criminal street gang intervention program that is appropriate for the child based on the child's level of involvement in the criminal activities of a criminal street gang. Sets forth requirements for the intervention program.

(c) Requires a child to complete the intervention program, if the child required to attend a criminal street gang intervention program is committed to the Texas Youth Commission (TYC) as a result of the gang-related conduct, before being discharged from the custody of or released under supervision by TYC.

SECTION 8. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0207, as follows:

Sec. 411.0207. LAW ENFORCEMENT INTERNAL AFFAIRS UNIT. (a) Defines "organized criminal activity."

(b) Provides that a law enforcement internal affairs unit (unit) is created within the Department of Public Safety of the State of Texas (DPS) to assist in the management of allegations of participation in organized criminal activity by an individual elected, appointed, or employed to serve as a peace officer for a governmental entity of this state under Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, or a federal law enforcement officer while performing duties in this state.

(c) Sets forth certain required responsibilities and duties of the unit.

(d) Authorizes the Public Safety Commission (commission) to direct an investigation by the unit if the commission determines that providing direction is in the best interest of this state.

(e) Requires a state or local law enforcement agency, to the extent allowed by law, to cooperate with the law enforcement internal affairs unit by providing information requested by the unit as necessary to carry out the purposes of this section. Provides that information described by this subsection is excepted from required disclosure under Chapter 552 (Public Information) in the manner

provided by Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information).

SECTION 9. Amends Section 3.03(a), Penal Code, to require sentences, except as provided by Subsection (b) (related to authorizing sentences to run concurrently or consecutively if each sentence is for a conviction of a certain offense) and Section 3.05, to run concurrently.

SECTION 10. Amends Section 3.04(b), Penal Code, to provide that in the event of severance under this section, the provisions of Section 3.03 (Sentences for Offenses Arising Out of Same Criminal Episode) do not apply, and, authorize the court in its discretion, except as provided by Section 3.05, to order the sentences to run either concurrently or consecutively.

SECTION 11. Amends Section 15.031(e), Penal Code, to provide that an offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor was at the time of the offense a member of a criminal street gang, as defined by Section 71.01 and committed the offense with the intent to further the criminal activities of the criminal street gang or avoid detection as a member of a criminal street gang.

SECTION 12. Amends Section 22.015(a), Penal Code, to define "family."

SECTION 13. Amends Section 22.015(b), Penal Code, to provide that a person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person threatens the child or a member of the child's family with imminent bodily injury or causes bodily injury to the child or a member of the child's family.

SECTION 14. Amends Chapter 33, Penal Code, by adding Section 33.06, as follows:

Sec. 33.06. ONLINE PROMOTION OF A CRIMINAL STREET GANG. (a) Defines "criminal street gang."

(b) Provides that a person commits an offense if, with the intent to benefit, to promote, or to further the interests of a criminal street gang or to increase the person's standing, position, or status in the criminal street gang, the person uses the Internet, including distributing, selling, transmitting, or posting on the Internet an audio, video, or still representation of a person engaged in criminal activity, to intimidate or harass another person or advertise the presence of the criminal street gang in a specific geographic location.

(c) Provides that an offense under this section is a state jail felony.

SECTION 15. Amends Section 37.10, Penal Code, by adding Subsection (j), to provide that it is not a defense to prosecution under Subsection (a)(2) (related to a person committing an offense if ne makes, presents, or uses any record, document, or thing with knowledge of its falsity) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

SECTION 16. Amends Section 38.02, Penal Code, by amending Subsection (c) and adding Subsection (d-1), as follows:

(c) Creates an exception as provided under Subsection (d-1).

(d-1) Provides that an offense under Subsection (b) (relating to an offense by intentionally providing a false or fictitious name) is a state jail felony if it is shown on the trial of the offense that the actor was at the time of the offense a member of a criminal street gang, as defined by Section 71.01, and committed the offense with the intent to further the criminal activities of the criminal street gang or avoid detection as a member of a criminal street gang.

SECTION 17. Amends Chapter 71, Penal Code, by adding Section 71.024, as follows:

Sec. 71.024. CAUSING OR ENCOURAGING CHILD TO PARTICIPATE IN GANG-RELATED CRIMINAL ACTIVITY. (a) Defines "child."

(b) Provides that a person commits an offense if the person intentionally, knowingly, or recklessly, by act or omission, causes or encourages a child to participate in any criminal activity that is committed by a criminal street gang and punishable as a Class A misdemeanor or a felony.

(c) Provides that an offense under this section is a felony of the third degree if the offense is committed intentionally or knowingly. Provides that an offense under this section is a Class A misdemeanor if the offense is committed recklessly.

(d) Authorizes an actor, if conduct, including an omission, constituting an offense under this section also constitutes an offense under another section of this code, to be prosecuted under either section or both sections.

SECTION 18. Amends Section 521.343(a), Transportation Code, to include Section 521.352 as an exception to the provision that a suspension of a driver's license under this subchapter is for one year.

SECTION 19. Amends Subchapter O, Chapter 521, Transportation Code, by adding Section 521.352, as follows:

Sec. 521.352. SUSPENSION FOR CERTAIN ORGANIZED CRIME OFFENSES. (a) Provides that a person's license is automatically suspended on conviction of the person for an offense under Chapter 71, Penal Code.

(b) Prohibits DPS from issuing a driver's license to a person convicted of an offense specified in Subsection (a) who, on the date of the conviction, did not hold a license.

(c) Provides that the period of license suspension or prohibition under this section begins on a date set by the court that is not earlier than the date of conviction or later than the 30th day after the date of conviction. Provides that the period of license suspension or prohibition under this section, except as provided by Subsection (d), expires on the first anniversary of the date the suspension or prohibition began.

(d) Provides that the period of license suspension or prohibition continues until the later of the first anniversary of the date the suspension or prohibition began or the date on which the defendant attains the age of 21 if on the date of conviction the defendant is younger than 21 years of age.

SECTION 20. Amends Section 521.457, Transportation Code, by amending Subsection (e) and adding Subsection (f-2), as follows:

(e) Provides that an offense under this section is a Class C misdemeanor, except as provided by Subsections (f), (f-1), and (f-2). Makes nonsubstantive changes.

(f-2) Provides that an offense is a Class A misdemeanor if it is shown on trial of an offense under this section that the person operated a motor vehicle on a highway during a period that the person's driver's license was suspended under Section 521.352 or the person was prohibited from obtaining a driver's license under that section.

SECTION 21. Provides that to the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and correction in enacted codes.

SECTION 22. Makes application of Chapter 100B, Civil Practice and Remedies Code, as added by this Act prospective.

SECTION 23. Makes application of Section 9, Article 42.01, Code of Criminal Procedure, and Article 42.0197, Code of Criminal Procedure, as added by this Act prospective.

SECTION 24. Makes application of Section 11(a), Article 42.12, Code of Criminal Procedure, as added by this Act prospective.

SECTION 25. Makes application of Article 59.01(2), Code of Criminal Procedure, and Article 59.011, Code of Criminal Procedure, as added by this Act prospective.

SECTION 26. Makes application of Section 54.0491, Family Code, as added by this Act prospective.

SECTION 27. Requires DPS to establish the law enforcement internal affairs unit under Section 411.0207, Government Code, as added by this Act, not later than December 1, 2010.

SECTION 28. Makes application of Sections 15.031(e), 22.015(b), 3.05, 37.10(j), 38.02(d-1), and 71.028, Penal Code, and Sections 521.352 and 521.457(f-2), Transportation Code, as added by this Act prospective.

SECTION 29. Effective date: September 1, 2009.