

BILL ANALYSIS

S.B. 366
By: Carona
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

An interim study undertaken by the Senate Committee on Transportation & Homeland Security found that many gang members become involved in criminal street gang activity at an early age and continue to be involved in illegal gang activity throughout adulthood. This propensity for repeat criminal activity is alarming for many reasons, particularly the lack of regard for the rule of law that it indicates. Prevention of repeat offenses by gang members must be a high priority in Texas.

Currently, when an offender is prosecuted and convicted under certain statutes, Section 3.03 (Sentences for Offenses Arising Out of Same Criminal Episode), Penal Code, gives the judge discretion when sentencing to require that the time of incarceration for separate offenses be served consecutively, commonly known as stacking the sentences, rather than allowing the time to be served concurrently. Those offenses that a judge is authorized to require to be served consecutively include intoxication assault, intoxication manslaughter, certain sexual offenses, and a number of other specific offenses.

S.B. 366 requires a judge to make an affirmative finding of fact and enter it in the judgment in the case if the judge determines that applicable conduct was engaged in as part of the activities of a criminal street gang and authorizes the sentences for more than one offense arising out of the same criminal episode to run concurrently or consecutively if each sentence is for a conviction of certain offenses, including an offense for which the judgment in the case contains an affirmative finding.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Article 42.01, Code of Criminal Procedure, by adding Section 9, to provide that the judgment, in addition to the information described by Section 1 (relating to a judgment being a written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant), should reflect affirmative findings entered pursuant to Article 42.0197.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0197, as follows:

Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. Requires a 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 3. Amends Section 3.03, Penal Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if each sentence is for a conviction of an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure.

(b-1) Provides that Subsection (b)(4) (relating to an offense which the judgment in the case contains certain affirmative findings) does not apply to a defendant whose case was transferred to the court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), Family Code.

SECTION 4. 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 5. Makes application of Section 3.03(b), Penal Code, as amended by this Act, prospective.

SECTION 6. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.