

By: Carona

S.B. No. 364

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain offenses committed against a public servant by a member of a criminal street gang.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0145 to read as follows:

Art. 42.0145. FINDING THAT GANG-RELATED OFFENSE COMMITTED AGAINST PUBLIC SERVANT. (a) In this article:

(1) "Criminal street gang" has the meaning assigned by Section 71.01, Penal Code.

(2) "Government" has the meaning assigned by Section 1.07, Penal Code.

(3) "Public servant" has the meaning assigned by Section 1.07, Penal Code.

(b) In the trial of an offense under Title 4, 5, 7, or 8, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if, at the guilt or innocence phase of the trial, the trier of fact determines beyond a reasonable doubt that:

(1) the defendant was at the time of the offense a member of a criminal street gang;

(2) the defendant committed the offense with the intent to further the criminal activities of the criminal street gang or to avoid detection as a member of a criminal street gang;

1 and

2 (3) the offense was committed against:

3 (A) a public servant who was lawfully discharging
4 a public duty and wearing a distinctive uniform or badge indicating
5 employment as a public servant; or

6 (B) government property that is clearly and
7 conspicuously marked as government property and routinely used by a
8 public servant in the lawful discharge of a public duty.

9 SECTION 2. Subchapter D, Chapter 12, Penal Code, is amended
10 by adding Section 12.475 to read as follows:

11 Sec. 12.475. PENALTY FOR GANG-RELATED OFFENSE COMMITTED
12 AGAINST PUBLIC SERVANT. (a) Except as provided by Subsections (b)
13 and (c), if an affirmative finding under Article 42.0145, Code of
14 Criminal Procedure, is made during the trial of an offense, the
15 punishment for the offense is increased to the punishment
16 prescribed for the next highest category of offense. If the offense
17 is a Class A misdemeanor, the punishment for the offense is
18 increased to a state jail felony.

19 (b) If the punishment scheme for an offense contains a
20 specific enhancement provision increasing punishment for a
21 defendant who is a member of a criminal street gang to a higher
22 category of offense than the higher category described by
23 Subsection (a), the specific enhancement provision controls over
24 this section.

25 (c) This section does not apply to the punishment for an
26 offense an element of which is being a member of or coercing,
27 soliciting, or inducing membership in a criminal street gang.

1 SECTION 3. Section 28.03, Penal Code, is amended by adding
2 Subsection (k) to read as follows:

3 (k) Notwithstanding Subsection (b), an offense under this
4 section is a state jail felony if:

5 (1) the tangible property damaged, destroyed, or
6 tampered with is government property that is clearly and
7 conspicuously marked as government property and routinely used by a
8 public servant in the lawful discharge of a public duty;

9 (2) the actor is at the time of the offense a member of
10 a criminal street gang, as defined by Section 71.01; and

11 (3) the amount of the pecuniary loss to the tangible
12 property is less than \$1,500.

13 SECTION 4. The change in law made by this Act applies only
14 to an offense committed on or after the effective date of this Act.
15 An offense committed before the effective date of this Act is
16 covered by the law in effect when the offense was committed, and the
17 former law is continued in effect for that purpose. For purposes of
18 this section, an offense was committed before the effective date of
19 this Act if any element of the offense occurred before that date.

20 SECTION 5. This Act takes effect September 1, 2009.