

By: Carona

S.B. No. 366

A BILL TO BE ENTITLED

AN ACT

relating to authorizing consecutive sentencing for certain offenses committed by a member of a criminal street gang.

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

SECTION 1. Article 42.01, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

Sec. 9. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0197.

SECTION 2. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0197 to read as follows:

Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In the trial of an offense, on the motion of the attorney representing the state the judge shall 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, Penal Code.

SECTION 3. Section 3.03, Penal Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

1 (1) an offense:

2 (A) under Section 49.07 or 49.08, regardless of
3 whether the accused is convicted of violations of the same section
4 more than once or is convicted of violations of both sections; or

5 (B) for which a plea agreement was reached in a
6 case in which the accused was charged with more than one offense
7 listed in Paragraph (A), regardless of whether the accused is
8 charged with violations of the same section more than once or is
9 charged with violations of both sections;

10 (2) an offense:

11 (A) under Section 33.021 or an offense under
12 Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed
13 against a victim younger than 17 years of age at the time of the
14 commission of the offense regardless of whether the accused is
15 convicted of violations of the same section more than once or is
16 convicted of violations of more than one section; or

17 (B) for which a plea agreement was reached in a
18 case in which the accused was charged with more than one offense
19 listed in Paragraph (A) committed against a victim younger than 17
20 years of age at the time of the commission of the offense regardless
21 of whether the accused is charged with violations of the same
22 section more than once or is charged with violations of more than
23 one section; [~~or~~]

24 (3) an offense:

25 (A) under Section 21.15 or 43.26, regardless of
26 whether the accused is convicted of violations of the same section
27 more than once or is convicted of violations of both sections; or

1 (B) for which a plea agreement was reached in a
2 case in which the accused was charged with more than one offense
3 listed in Paragraph (A), regardless of whether the accused is
4 charged with violations of the same section more than once or is
5 charged with violations of both sections; or

6 (4) an offense for which the judgment in the case
7 contains an affirmative finding under Article 42.0197, Code of
8 Criminal Procedure.

9 (b-1) Subsection (b)(4) does not apply to a defendant whose
10 case was transferred to the court under Section 54.02, Family Code.

11 SECTION 4. Section 9, Article 42.01, Code of Criminal
12 Procedure, and Article 42.0197, Code of Criminal Procedure, as
13 added by this Act, apply only to a judgment of conviction entered on
14 or after the effective date of this Act.

15 SECTION 5. Subsection (b), Section 3.03, Penal Code, as
16 amended by this Act, applies only to an offense committed on or
17 after the effective date of this Act. An offense committed before
18 the effective date of this Act is governed by the law in effect at
19 the time the offense was committed, and the former law is continued
20 in effect for that purpose. For purposes of this section, an
21 offense was committed before the effective date of this Act if any
22 element of the offense occurred before that date.

23 SECTION 6. This Act takes effect September 1, 2009.