

By: Carona

S.B. No. 366

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of consecutive sentencing for offenses committed by a member of a criminal street gang.

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

SECTION 1. Article 42.08(b), Code of Criminal Procedure, is amended to read as follows:

(b) The court ~~[If a defendant is sentenced for an offense committed while the defendant was an inmate in the institutional division of the Texas Department of Criminal Justice and the defendant has not completed the sentence he was serving at the time of the offense, the judge]~~ shall order the sentence imposed in a second or ~~[for the]~~ subsequent conviction ~~[offense]~~ to commence immediately on completion of the sentence imposed in a preceding conviction if:

(1) the defendant committed the offense that is the subject of the second or subsequent conviction while the defendant was an inmate in the Texas Department of Criminal Justice serving the sentence imposed in a preceding conviction; or

(2) the judgment for each conviction includes, as a finding or as an element of the underlying offense, participation in a criminal street gang as defined by Section 71.01, Penal Code ~~[for the original offense].~~

SECTION 2. Section 3.03(a), Penal Code, is amended to read as follows:

1 (a) When the accused is found guilty of more than one
2 offense arising out of the same criminal episode prosecuted in a
3 single criminal action, a sentence for each offense for which he has
4 been found guilty shall be pronounced. Except as provided by
5 Subsection (b) and Section 3.05, the sentences shall run
6 concurrently.

7 SECTION 3. Section 3.04(b), Penal Code, is amended to read
8 as follows:

9 (b) In the event of severance under this section, the
10 provisions of Section 3.03 do not apply, and, except as provided by
11 Section 3.05, the court in its discretion may order the sentences to
12 run either concurrently or consecutively.

13 SECTION 4. Chapter 3, Penal Code, is amended by adding
14 Section 3.05 to read as follows:

15 Sec. 3.05. MULTIPLE OFFENSES COMMITTED BY MEMBER OF
16 CRIMINAL STREET GANG. If the defendant is convicted of more than
17 one offense arising out of the same criminal episode and the
18 judgment of conviction with respect to each offense includes, as a
19 finding or as an element of the offense, participation in a criminal
20 street gang as defined by Section 71.01, the sentences for the
21 offenses run consecutively.

22 SECTION 5. The change in law made by this Act applies only
23 to an offense committed on or after the effective date of this Act.
24 An offense committed before the effective date of this Act is
25 governed by the law in effect when the offense was committed, and
26 the former law is continued in effect for that purpose. For
27 purposes of this section, an offense was committed before the

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1 effective date of this Act if any element of the offense occurred
2 before that date.

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