

1-1 By: Carona S.B. No. 366
1-2 (In the Senate - Filed December 15, 2008; February 17, 2009,
1-3 read first time and referred to Committee on Transportation and
1-4 Homeland Security; April 8, 2009, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 8,
1-6 Nays 0; April 8, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 366 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to authorizing consecutive sentencing for certain
1-11 offenses committed by a member of a criminal street gang.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 42.01, Code of Criminal Procedure, is
1-14 amended by adding Section 9 to read as follows:

1-15 Sec. 9. In addition to the information described by Section
1-16 1, the judgment should reflect affirmative findings entered
1-17 pursuant to Article 42.0197.

1-18 SECTION 2. Chapter 42, Code of Criminal Procedure, is
1-19 amended by adding Article 42.0197 to read as follows:

1-20 Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In
1-21 the trial of an offense, on the motion of the attorney representing
1-22 the state the judge shall make an affirmative finding of fact and
1-23 enter the affirmative finding in the judgment in the case if the
1-24 judge determines that the applicable conduct was engaged in as part
1-25 of the activities of a criminal street gang as defined by Section
1-26 71.01, Penal Code.

1-27 SECTION 3. Section 3.03, Penal Code, is amended by amending
1-28 Subsection (b) and adding Subsection (b-1) to read as follows:

1-29 (b) If the accused is found guilty of more than one offense
1-30 arising out of the same criminal episode, the sentences may run
1-31 concurrently or consecutively if each sentence is for a conviction
1-32 of:

1-33 (1) an offense:

1-34 (A) under Section 49.07 or 49.08, regardless of
1-35 whether the accused is convicted of violations of the same section
1-36 more than once or is convicted of violations of both sections; or

1-37 (B) for which a plea agreement was reached in a
1-38 case in which the accused was charged with more than one offense
1-39 listed in Paragraph (A), regardless of whether the accused is
1-40 charged with violations of the same section more than once or is
1-41 charged with violations of both sections;

1-42 (2) an offense:

1-43 (A) under Section 33.021 or an offense under
1-44 Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed
1-45 against a victim younger than 17 years of age at the time of the
1-46 commission of the offense regardless of whether the accused is
1-47 convicted of violations of the same section more than once or is
1-48 convicted of violations of more than one section; or

1-49 (B) for which a plea agreement was reached in a
1-50 case in which the accused was charged with more than one offense
1-51 listed in Paragraph (A) committed against a victim younger than 17
1-52 years of age at the time of the commission of the offense regardless
1-53 of whether the accused is charged with violations of the same
1-54 section more than once or is charged with violations of more than
1-55 one section; [~~or~~]

1-56 (3) an offense:

1-57 (A) under Section 21.15 or 43.26, regardless of
1-58 whether the accused is convicted of violations of the same section
1-59 more than once or is convicted of violations of both sections; or

1-60 (B) for which a plea agreement was reached in a
1-61 case in which the accused was charged with more than one offense
1-62 listed in Paragraph (A), regardless of whether the accused is
1-63 charged with violations of the same section more than once or is

2-1 charged with violations of both sections; or
2-2 (4) an offense for which the judgment in the case
2-3 contains an affirmative finding under Article 42.0197, Code of
2-4 Criminal Procedure.

2-5 (b-1) Subsection (b)(4) does not apply to a defendant whose
2-6 case was transferred to the court under Section 54.02, Family Code.

2-7 SECTION 4. Section 9, Article 42.01, Code of Criminal
2-8 Procedure, and Article 42.0197, Code of Criminal Procedure, as
2-9 added by this Act, apply only to a judgment of conviction entered on
2-10 or after the effective date of this Act.

2-11 SECTION 5. Subsection (b), Section 3.03, Penal Code, as
2-12 amended by this Act, applies only to an offense committed on or
2-13 after the effective date of this Act. An offense committed before
2-14 the effective date of this Act is governed by the law in effect at
2-15 the time the offense was committed, and the former law is continued
2-16 in effect for that purpose. For purposes of this section, an
2-17 offense was committed before the effective date of this Act if any
2-18 element of the offense occurred before that date.

2-19 SECTION 6. This Act takes effect September 1, 2009.

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