

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Moody

H.B. No. 2086

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and punishment of the offense of  
engaging in organized criminal activity.

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

SECTION 1. Section 71.02(a), Penal Code, is amended to read  
as follows:

(a) A person commits an offense if, with the intent to  
establish, maintain, or participate in a combination or in the  
profits of a combination or as a member of a criminal street gang,  
he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated  
robbery, robbery, burglary, theft, aggravated kidnapping,  
kidnapping, aggravated assault, aggravated sexual assault, sexual  
assault, forgery, deadly conduct, assault punishable as a Class A  
misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
motor vehicle;

(2) any gambling offense punishable as a Class A  
misdemeanor;

(3) promotion of prostitution, aggravated promotion  
of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or  
sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or  
distribution of a controlled substance or dangerous drug, or

1 unlawful possession of a controlled substance or dangerous drug  
2 through forgery, fraud, misrepresentation, or deception;

3 (6) any unlawful wholesale promotion or possession of  
4 any obscene material or obscene device with the intent to wholesale  
5 promote the same;

6 (7) any offense under Subchapter B, Chapter 43,  
7 depicting or involving conduct by or directed toward a child  
8 younger than 18 years of age;

9 (8) any felony offense under Chapter 32;

10 (9) any offense under Chapter 36;

11 (10) any offense under Chapter 34 or 35;

12 (11) any offense under Section 37.11(a);

13 (12) any offense under Chapter 20A; ~~[ex]~~

14 (13) any offense under Section 37.10<sub>i</sub>;

15 (14) any offense under Section 28.08; or

16 (15) any offense under Section 38.06, 38.07, 38.09, or  
17 38.11.

18 SECTION 2. The change in law made by this Act applies only  
19 to an offense committed on or after the effective date of this Act.  
20 An offense committed before the effective date of this Act is  
21 covered by the law in effect when the offense was committed, and the  
22 former law is continued in effect for that purpose. For purposes of  
23 this section, an offense was committed before the effective date of  
24 this Act if any element of the offense occurred before that date.

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

ADOPTED


MAY 27 2009

  
Secretary of the Senate

By: Whitmire

H.B. No. 2086

Substitute the following for H.B. No. 2086:

By: 

C.S. H.B. No. 2086

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(1) murder, capital murder, arson, aggravated  
robbery, robbery, burglary, theft, aggravated kidnapping,  
kidnapping, aggravated assault, aggravated sexual assault, sexual  
assault, forgery, deadly conduct, assault punishable as a Class A  
misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
motor vehicle;

(2) any gambling offense punishable as a Class A  
misdemeanor;

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of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or  
sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or  
distribution of a controlled substance or dangerous drug, or

1 unlawful possession of a controlled substance or dangerous drug  
2 through forgery, fraud, misrepresentation, or deception;

3 (6) any unlawful wholesale promotion or possession of  
4 any obscene material or obscene device with the intent to wholesale  
5 promote the same;

6 (7) any offense under Subchapter B, Chapter 43,  
7 depicting or involving conduct by or directed toward a child  
8 younger than 18 years of age;

9 (8) any felony offense under Chapter 32;

10 (9) any offense under Chapter 36;

11 (10) any offense under Chapter 34 or 35;

12 (11) any offense under Section 37.11(a);

13 (12) any offense under Chapter 20A; ~~[or]~~

14 (13) any offense under Section 37.10; or

15 (14) any offense under Section 38.06, 38.07, 38.09, or  
16 38.11.

17 SECTION 2. The change in law made by this Act applies only  
18 to an offense committed on or after the effective date of this Act.  
19 An offense committed before the effective date of this Act is  
20 covered by the law in effect when the offense was committed, and the  
21 former law is continued in effect for that purpose. For purposes of  
22 this section, an offense was committed before the effective date of  
23 this Act if any element of the offense occurred before that date.

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

# ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 1

*Atty Gen*  
Secretary of the Senate

BY: Caron

1 Amend CS HB No. 2086 by adding the following appropriately  
2 numbered SECTIONS to the bill and renumbering subsequent  
3 SECTIONS of the bill accordingly:

4 SECTION \_\_\_\_ Subsection (e), Section 15.031, Penal Code,  
5 is amended to read as follows:

6 (e) An offense under this section is one category lower  
7 than the solicited offense, except that an offense under this  
8 section is the same category as the solicited offense if it is  
9 shown on the trial of the offense that the actor:

10 (1) was at the time of the offense 17 years of age or  
11 older and a member of a criminal street gang, as defined by  
12 Section 71.01; and

13 (2) committed the offense with the intent to:

14 (A) further the criminal activities of the  
15 criminal street gang; or

16 (B) avoid detection as a member of a criminal  
17 street gang.

18 SECTION \_\_\_\_ Subsection (a), Section 22.015, Penal Code,  
19 is amended by adding Subdivision (3) to read as follows:

20 (3) "Family" has the meaning assigned by Section  
21 71.003, Family Code.

22 SECTION \_\_\_\_ Subsection (b), Section 22.015, Penal Code,  
23 is amended to read as follows:

24 (b) A person commits an offense if, with intent to coerce,  
25 induce, or solicit a child to actively participate in the  
26 activities of a criminal street gang, the person:

27 (1) threatens the child or a member of the child's  
28 family with imminent bodily injury; or

29 (2) causes bodily injury to the child or a member of  
30 the child's family.

1       SECTION \_\_\_\_ Chapter 33, Penal Code, is amended by adding  
2       Section 33.06 to read as follows:

3       Sec. 33.06. ONLINE HARASSMENT TO FURTHER INTERESTS OF  
4       CRIMINAL STREET GANG. (a) In this section:

5               (1) "Commercial social networking site" means any  
6       business, organization, or other similar entity operating a  
7       website that permits persons to become registered users for the  
8       purpose of establishing personal relationships with other users  
9       through direct or real-time communication with other users or  
10       the creation of web pages or profiles available to the public or  
11       to other users. The term does not include an electronic mail  
12       program.

13               (2) "Criminal street gang" has the meaning assigned  
14       by Section 71.01.

15               (3) "Electronic communication" means the transmission  
16       of a sign, signal, writing, image, sound, text, or other data  
17       through the use of an electronic device, including a telephone,  
18       cellular telephone, text messaging device, personal data  
19       assistant, computer, or wireless communications device.

20       (b) A person commits an offense if the person sends an  
21       electronic communication or posts a message on an electronic  
22       message board or commercial social networking site with the  
23       intent to:

24               (1) abuse, intimidate, harass, alarm, or threaten  
25       another person; and

26               (2) benefit, promote, or further the interests of a  
27       criminal street gang.

28       (c) An offense under this section is a Class B  
29       misdemeanor, except that the offense is a Class A misdemeanor if  
30       the actor has previously been convicted of an offense under this  
31       section.

1       SECTION \_\_\_\_ Subsection (a), Section 71.02, Penal Code, is  
2 amended to read as follows:

3       (a) A person commits an offense if, with the intent to  
4 establish, maintain, or participate in a combination or in the  
5 profits of a combination or as a member of a criminal street  
6 gang, the person [~~he~~] commits or conspires to commit one or more  
7 of the following:

8           (1) murder, capital murder, arson, aggravated  
9 robbery, robbery, burglary, theft, aggravated kidnapping,  
10 kidnapping, aggravated assault, aggravated sexual assault,  
11 sexual assault, forgery, deadly conduct, assault punishable as a  
12 Class A misdemeanor, burglary of a motor vehicle, or  
13 unauthorized use of a motor vehicle;

14           (2) any gambling offense punishable as a Class A  
15 misdemeanor;

16           (3) promotion of prostitution, aggravated promotion  
17 of prostitution, or compelling prostitution;

18           (4) unlawful manufacture, transportation, repair, or  
19 sale of firearms or prohibited weapons;

20           (5) unlawful manufacture, delivery, dispensation, or  
21 distribution of a controlled substance or dangerous drug, or  
22 unlawful possession of a controlled substance or dangerous drug  
23 through forgery, fraud, misrepresentation, or deception;

24           (6) any unlawful wholesale promotion or possession of  
25 any obscene material or obscene device with the intent to  
26 wholesale promote the same;

27           (7) any offense under Subchapter B, Chapter 43,  
28 depicting or involving conduct by or directed toward a child  
29 younger than 18 years of age;

30           (8) any felony offense under Chapter 32;

31           (9) any offense under Chapter 36;

32           (10) any offense under Chapter 34 or 35;

- 1           (11) any offense under Section 37.11(a);  
2           (12) any offense under Chapter 20A; ~~[or]~~  
3           (13) any offense under Section 37.10;  
4           (14) any offense under Section 28.08; or  
5           (15) any offense under Section 46.06(a)(1) or 46.14.

6       SECTION \_\_\_\_ Chapter 71, Penal Code, is amended by adding  
7 Sections 71.023, 71.028, and 71.029 to read as follows:

8       Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL  
9 STREET GANGS. (a) A person commits an offense if the person  
10 knowingly initiates, organizes, plans, finances, directs,  
11 manages, or supervises a criminal street gang or members of a  
12 criminal street gang with the intent to benefit, promote, or  
13 further the interests of the criminal street gang or to increase  
14 the person's standing, position, or status in the criminal  
15 street gang.

16       (b) An offense under this section is a felony of the first  
17 degree.

18       (c) Notwithstanding Section 71.01, in this section,  
19 "criminal street gang" means:

20           (1) an organization that:

21               (A) has more than 10 members whose names are  
22 included in an intelligence database under Chapter 61, Code of  
23 Criminal Procedure;

24               (B) has a hierarchical structure that has been  
25 documented in an intelligence database under Chapter 61, Code of  
26 Criminal Procedure;

27               (C) engages in profit-sharing among two or more  
28 members of the organization; and

29               (D) in one or more regions of this state served  
30 by different regional councils of government, continuously or  
31 regularly engages in conduct:



1 (i) that constitutes an offense listed in  
2 Section 3q(a) (1), Article 42.12, Code of Criminal Procedure;

3 (ii) in which it is alleged that a deadly  
4 weapon is used or exhibited during the commission of or  
5 immediate flight from the commission of any felony offense; or

6 (iii) that is punishable as a felony of the  
7 first or second degree under Chapter 481, Health and Safety  
8 Code; or

9 (2) an organization that, in collaboration with an  
10 organization described by Subdivision (1), engages in conduct or  
11 commits an offense or conspires to engage in conduct or commit  
12 an offense described by Subdivision (1) (D).

13 Sec. 71.028. GANG-FREE ZONES. (a) In this section:

14 (1) "Institution of higher education," "playground,"  
15 "premises," "school," "video arcade facility," and "youth  
16 center" have the meanings assigned by Section 481.134, Health  
17 and Safety Code.

18 (2) "Shopping mall" means an enclosed public walkway  
19 or hall area that connects retail, service, or professional  
20 establishments.

21 (b) Except as provided by Subsection (c), the punishment  
22 prescribed for an offense under Section 71.02 is increased to  
23 the punishment prescribed for the next highest category of  
24 offense if the actor is 17 years of age or older and it is shown  
25 beyond a reasonable doubt on the trial of the offense that the  
26 actor committed the offense at a location that was:

27 (1) in, on, or within 1,000 feet of any:

28 (A) real property that is owned, rented, or  
29 leased by a school or school board;

30 (B) premises owned, rented, or leased by an  
31 institution of higher education;

32 (C) shopping mall;

1                   (D) movie theater;

2                   (E) premises of a public or private youth  
3 center; or

4                   (F) playground;

5                   (2) in, on, or within 300 feet of the premises of a  
6 public swimming pool or video arcade facility; or

7                   (3) on a school bus.

8           (c) The punishment prescribed for an offense under Section  
9 71.02 may not be increased under this section if the offense is  
10 punishable under Section 71.02 as a felony of the first degree.

11           Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a)  
12 In a prosecution of an offense for which punishment is increased  
13 under Section 71.028, a map produced or reproduced by a  
14 municipal or county engineer for the purpose of showing the  
15 location and boundaries of gang-free zones is admissible in  
16 evidence and is prima facie evidence of the location or  
17 boundaries of those zones if the governing body of the  
18 municipality or county adopts a resolution or ordinance  
19 approving the map as an official finding and record of the  
20 location or boundaries of those zones.

21           (b) A municipal or county engineer may, on request of the  
22 governing body of the municipality or county, revise a map that  
23 has been approved by the governing body of the municipality or  
24 county as provided by Subsection (a).

25           (c) A municipal or county engineer shall file the original  
26 or a copy of every approved or revised map approved as provided  
27 by Subsection (a) with the county clerk of each county in which  
28 the zone is located.

29           (d) This section does not prevent the prosecution from:

30                   (1) introducing or relying on any other evidence or  
31 testimony to establish any element of an offense for which  
32 punishment is increased under Section 71.028; or

1           (2) using or introducing any other map or diagram  
2 otherwise admissible under the Texas Rules of Evidence.

3           SECTION \_\_\_\_\_. Subchapter D, Chapter 37, Education Code, is  
4 amended by adding Section 37.110 to read as follows:

5           Sec. 37.110. INFORMATION REGARDING GANG-FREE ZONES. The  
6 superintendent of each public school district and the  
7 administrator of each private elementary or secondary school  
8 located in the public school district shall ensure that the  
9 student handbook for each campus in the public school district  
10 includes information on gang-free zones and the consequences of  
11 engaging in organized criminal activity within those zones.

12          SECTION \_\_\_\_\_. Subchapter Z, Chapter 51, Education Code, is  
13 amended by adding Section 51.973 to read as follows:

14          Sec. 51.973. INFORMATION REGARDING GANG-FREE ZONES. The  
15 governing board of each institution of higher education shall  
16 ensure that any student handbook or similar publication for the  
17 institution includes information on gang-free zones and the  
18 consequences of engaging in organized criminal activity within  
19 those zones.

20          SECTION \_\_\_\_\_. Subchapter C, Chapter 42, Human Resources  
21 Code, is amended by adding Section 42.064 to read as follows:

22          Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES. Each  
23 day-care center shall, in accordance with rules adopted by the  
24 executive commissioner, distribute to parents and guardians of  
25 children who attend the center information on gang-free zones  
26 and the consequences of engaging in organized criminal activity  
27 within those zones.

28          SECTION \_\_\_\_\_. Section 37.110, Education Code, as added by  
29 this Act, applies beginning with the public school district's  
30 2009-2010 school year.

31          SECTION \_\_\_\_\_. Section 51.973, Education Code, as added by  
32 this Act, applies beginning with the 2009 fall semester.

1       SECTION \_\_\_\_\_. Subsection (e), Section 15.031, Subsection  
2       (b), Section 22.015, and Subsection (a), Section 71.02, Penal  
3       Code, as amended by this Act, and Section 71.028, Penal Code, as  
4       added by this Act, apply only to an offense committed on or  
5       after the effective date of this Act. An offense committed  
6       before the effective date of this Act is covered by the law in  
7       effect when the offense was committed, and the former law is  
8       continued in effect for that purpose. For purposes of this  
9       section, an offense was committed before the effective date of  
10      this Act if any element of the offense occurred before that  
11      date.

12      SECTION \_\_\_\_\_. Subchapter D, Chapter 125, Civil Practice and  
13      Remedies Code, is amended by adding Section 125.070 to read as  
14      follows:

15      Sec. 125.070. CIVIL ACTION FOR VIOLATION OF INJUNCTION.

16      (a) In this section, "governmental entity" means a political  
17      subdivision of this state, including any city, county, school  
18      district, junior college district, levee improvement district,  
19      drainage district, irrigation district, water improvement  
20      district, water control and improvement district, water control  
21      and preservation district, freshwater supply district,  
22      navigation district, conservation and reclamation district, soil  
23      conservation district, communication district, public health  
24      district, and river authority.

25      (b) A criminal street gang or a member of a criminal  
26      street gang is liable to the state or a governmental entity  
27      injured by the violation of a temporary or permanent injunctive  
28      order under this subchapter.

29      (c) In an action brought against a member of a criminal  
30      street gang, the plaintiff must show that the member violated  
31      the temporary or permanent injunctive order.

1       (d) A district, county, or city attorney or the attorney  
2 general may sue for money damages on behalf of the state or a  
3 governmental entity. If the state or a governmental entity  
4 prevails in a suit under this section, the state or governmental  
5 entity may recover:

6           (1) actual damages;

7           (2) a civil penalty in an amount not to exceed  
8 \$20,000 for each violation; and

9           (3) court costs and attorney's fees.

10       (e) The property of the criminal street gang or a member  
11 of the street gang may be seized in execution on a judgment  
12 under this section.

13       (f) The attorney general shall deposit money received  
14 under this section for damages or as a civil penalty in the  
15 neighborhood and community recovery fund held by the attorney  
16 general outside the state treasury. Money in the fund is held  
17 by the attorney general in trust for the benefit of the  
18 community or neighborhood harmed by the violation of a temporary  
19 or permanent injunctive order. Money in the fund may be used  
20 only for the benefit of the community or neighborhood harmed by  
21 the violation of the injunctive order. Interest earned on money  
22 in the fund shall be credited to the fund. The attorney general  
23 shall account for money in the fund so that money held for the  
24 benefit of a community or neighborhood, and interest earned on  
25 that money, are not commingled with money in the fund held for  
26 the benefit of a different community or neighborhood.

27       (g) A district, county, or city attorney who brings suit  
28 on behalf of a governmental entity shall deposit money received  
29 for damages or as a civil penalty in an account to be held in  
30 trust for the benefit of the community or neighborhood harmed by  
31 the violation of a temporary or permanent injunctive order.  
32 Money in the account may be used only for the benefit of the

1 community or neighborhood harmed by the violation of the  
2 injunctive order. Interest earned on money in the account shall  
3 be credited to the account. The district, county, or city  
4 attorney shall account for money in the account so that money  
5 held for the benefit of a community or neighborhood, and  
6 interest earned on that money, are not commingled with money in  
7 the account held for the benefit of a different community or  
8 neighborhood.

9 (h) An action under this section brought by the state or a  
10 governmental entity does not waive sovereign or governmental  
11 immunity for any purpose.

12 SECTION \_\_\_\_ . Subdivision (2), Article 59.01, Code of  
13 Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822  
14 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature,  
15 Regular Session, 2007, is reenacted and amended to read as  
16 follows:

17 (2) "Contraband" means property of any nature,  
18 including real, personal, tangible, or intangible, that is:

19 (A) used in the commission of:

20 (i) any first or second degree felony under  
21 the Penal Code;

22 (ii) any felony under Section 15.031(b),  
23 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29,  
24 30, 31, 32, 33, 33A, or 35, Penal Code;

25 (iii) any felony under The Securities Act  
26 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

27 (iv) any offense under Chapter 49, Penal  
28 Code, that is punishable as a felony of the third degree or  
29 state jail felony, if the defendant has been previously  
30 convicted three times of an offense under that chapter;

31 (B) used or intended to be used in the  
32 commission of:

1 (i) any felony under Chapter 481, Health  
2 and Safety Code (Texas Controlled Substances Act);  
3 (ii) any felony under Chapter 483, Health  
4 and Safety Code;  
5 (iii) a felony under Chapter 153, Finance  
6 Code;  
7 (iv) any felony under Chapter 34, Penal  
8 Code;  
9 (v) a Class A misdemeanor under Subchapter  
10 B, Chapter 365, Health and Safety Code, if the defendant has  
11 been previously convicted twice of an offense under that  
12 subchapter;  
13 (vi) any felony under Chapter 152, Finance  
14 Code;  
15 (vii) any felony under Chapter 32, Human  
16 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
17 involves the state Medicaid program;  
18 (viii) a Class B misdemeanor under Chapter  
19 522, Business & Commerce Code; ~~[or]~~  
20 (ix) a Class A misdemeanor under Section  
21 35.153, Business & Commerce Code;  
22 (x) any offense under Chapter 71, Penal  
23 Code; or  
24 (xi) any offense under Section 46.06(a)(1)  
25 or 46.14, Penal Code;  
26 (C) the proceeds gained from the commission of a  
27 felony listed in Paragraph (A) or (B) of this subdivision, a  
28 misdemeanor listed in Paragraph (B) (viii), (x), or (xi) of this  
29 subdivision, or a crime of violence;  
30 (D) acquired with proceeds gained from the  
31 commission of a felony listed in Paragraph (A) or (B) of this

1 subdivision, a misdemeanor listed in Paragraph (B)(viii), (x),  
2 or (xi) of this subdivision, or a crime of violence; or

3 (E) used to facilitate or intended to be used to  
4 facilitate the commission of a felony under Section 15.031 or  
5 43.25, Penal Code.

6 SECTION \_\_\_\_\_. Chapter 59, Code of Criminal Procedure, is  
7 amended by adding Article 59.011 to read as follows:

8 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If  
9 property described by Article 59.01(2)(B)(x) or (xi) is subject  
10 to forfeiture under this chapter and Article 18.18, the attorney  
11 representing the state may proceed under either this chapter or  
12 that article.

13 SECTION \_\_\_\_\_. Section 125.070, Civil Practice and Remedies  
14 Code, as added by this Act, applies only to a cause of action  
15 that accrues on or after the effective date of this Act. A  
16 cause of action that accrued before the effective date of this  
17 Act is governed by the law in effect immediately before the  
18 effective date of this Act, and that law is continued in effect  
19 for that purpose.

20 SECTION \_\_\_\_\_. Subdivision (2), Article 59.01, Code of  
21 Criminal Procedure, as amended by this Act, and Article 59.011,  
22 Code of Criminal Procedure, as added by this Act, apply only to  
23 the forfeiture of property used in the commission of an offense  
24 committed on or after the effective date of this Act.  
25 Forfeiture of property used in the commission of an offense  
26 committed before the effective date of this Act is governed by  
27 the law in effect when the offense was committed, and the former  
28 law is continued in effect for that purpose. For purposes of  
29 this section, an offense was committed before the effective date  
30 of this Act if any element of the offense occurred before that  
31 date.



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

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

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

8       Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In  
9 the trial of an offense, on the motion of the attorney  
10 representing the state the judge shall make an affirmative  
11 finding of fact and enter the affirmative finding in the  
12 judgment in the case if the judge determines that the applicable  
13 conduct was engaged in as part of the activities of a criminal  
14 street gang as defined by Section 71.01, Penal Code.

15       SECTION \_\_\_\_\_. Subsection (a), Section 11, Article 42.12,  
16 Code of Criminal Procedure, is amended to read as follows:

17       (a) The judge of the court having jurisdiction of the case  
18 shall determine the conditions of community supervision and may,  
19 at any time[7] during the period of community supervision, alter  
20 or modify the conditions. The judge may impose any reasonable  
21 condition that is designed to protect or restore the community,  
22 protect or restore the victim, or punish, rehabilitate, or  
23 reform the defendant. Conditions of community supervision may  
24 include, but shall not be limited to, the conditions that the  
25 defendant shall:

26               (1) Commit no offense against the laws of this State  
27 or of any other State or of the United States;

28               (2) Avoid injurious or vicious habits;

29               (3) Avoid persons or places of disreputable or  
30 harmful character, including any person, other than a family  
31 member of the defendant, who is an active member of a criminal  
32 street gang;

1           (4) Report to the supervision officer as directed by  
2 the judge or supervision officer and obey all rules and  
3 regulations of the community supervision and corrections  
4 department;

5           (5) Permit the supervision officer to visit the  
6 defendant at the defendant's home or elsewhere;

7           (6) Work faithfully at suitable employment as far as  
8 possible;

9           (7) Remain within a specified place;

10          (8) Pay the defendant's fine, if one is [~~be~~]  
11 assessed, and all court costs whether a fine is [~~be~~] assessed or  
12 not, in one or several sums;

13          (9) Support the defendant's dependents;

14          (10) Participate, for a time specified by the judge,  
15 in any community-based program, including a community-service  
16 work program under Section 16 of this article;

17          (11) Reimburse the county in which the prosecution  
18 was instituted for compensation paid to appointed counsel for  
19 defending the defendant in the case, if counsel was appointed,  
20 or if the defendant was represented by a county-paid public  
21 defender, in an amount that would have been paid to an appointed  
22 attorney had the county not had a public defender;

23          (12) Remain under custodial supervision in a  
24 community corrections facility, obey all rules and regulations  
25 of the [~~such~~] facility, and pay a percentage of the defendant's  
26 income to the facility for room and board;

27          (13) Pay a percentage of the defendant's income to  
28 the defendant's dependents for their support while under  
29 custodial supervision in a community corrections facility;

30          (14) Submit to testing for alcohol or controlled  
31 substances;

1           (15) Attend counseling sessions for substance abusers  
2 or participate in substance abuse treatment services in a  
3 program or facility approved or licensed by the Texas Commission  
4 on Alcohol and Drug Abuse;

5           (16) With the consent of the victim of a misdemeanor  
6 offense or of any offense under Title 7, Penal Code, participate  
7 in victim-defendant mediation;

8           (17) Submit to electronic monitoring;

9           (18) Reimburse the compensation to victims of crime  
10 fund for any amounts paid from that fund to or on behalf of a  
11 victim, as defined by Article 56.32, of the defendant's offense  
12 or if no reimbursement is required, make one payment to the  
13 compensation to victims of crime fund in an amount not to exceed  
14 \$50 if the offense is a misdemeanor or not to exceed \$100 if the  
15 offense is a felony;

16           (19) Reimburse a law enforcement agency for the  
17 analysis, storage, or disposal of raw materials, controlled  
18 substances, chemical precursors, drug paraphernalia, or other  
19 materials seized in connection with the offense;

20           (20) Pay all or part of the reasonable and necessary  
21 costs incurred by the victim for psychological counseling made  
22 necessary by the offense or for counseling and education  
23 relating to acquired immune deficiency syndrome or human  
24 immunodeficiency virus made necessary by the offense;

25           (21) Make one payment in an amount not to exceed \$50  
26 to a crime stoppers organization as defined by Section 414.001,  
27 Government Code, and as certified by the Crime Stoppers Advisory  
28 Council;

29           (22) Submit a DNA sample to the Department of Public  
30 Safety under Subchapter G, Chapter 411, Government Code, for the  
31 purpose of creating a DNA record of the defendant;

1           (23) In any manner required by the judge, provide  
2 public notice of the offense for which the defendant was placed  
3 on community supervision in the county in which the offense was  
4 committed; and

5           (24) Reimburse the county in which the prosecution  
6 was instituted for compensation paid to any interpreter in the  
7 case.

8           SECTION \_\_\_\_\_. Article 42.12, Code of Criminal Procedure, is  
9 amended by adding Section 13E to read as follows:

10           Sec. 13E. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF  
11 CRIMINAL STREET GANG WHO ARE PLACED ON COMMUNITY SUPERVISION.

12           (a) This section applies only to a defendant who:

13                   (1) is identified as a member of a criminal street  
14 gang in an intelligence database established under Chapter 61;  
15 and

16                   (2) has two or more times been previously convicted  
17 of, or received a grant of deferred adjudication community  
18 supervision or another functionally equivalent form of community  
19 supervision or probation for, a felony offense under the laws of  
20 this state, another state, or the United States.

21           (b) A court granting community supervision to a defendant  
22 described by Subsection (a) may, on the defendant's conviction  
23 of a felony offense, require as a condition of community  
24 supervision that the defendant submit to tracking under an  
25 electronic monitoring service or other appropriate technological  
26 service designed to track a person's location.

27           SECTION \_\_\_\_\_. Chapter 54, Family Code, is amended by adding  
28 Section 54.0491 to read as follows:

29           Sec. 54.0491. GANG-RELATED CONDUCT. (a) In this section:

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

1           (2) "Gang-related conduct" means conduct that  
2 violates a penal law of the grade of Class B misdemeanor or  
3 higher and in which a child engages with the intent to:

4           (A) further the criminal activities of a  
5 criminal street gang of which the child is a member;

6           (B) gain membership in a criminal street gang;  
7 or

8           (C) avoid detection as a member of a criminal  
9 street gang.

10       (b) A juvenile court, in a disposition hearing under  
11 Section 54.04 regarding a child who has been adjudicated to have  
12 engaged in delinquent conduct that is also gang-related conduct,  
13 shall order the child to participate in a criminal street gang  
14 intervention program that is appropriate for the child based on  
15 the child's level of involvement in the criminal activities of a  
16 criminal street gang. The intervention program:

17           (1) must include at least 12 hours of instruction;

18 and

19           (2) may include voluntary tattoo removal.

20       (c) If a child required to attend a criminal street gang  
21 intervention program is committed to the Texas Youth Commission  
22 as a result of the gang-related conduct, the child must complete  
23 the intervention program before being discharged from the  
24 custody of or released under supervision by the commission.

25       SECTION \_\_\_\_\_. Subchapter G, Chapter 508, Government Code,  
26 is amended by adding Section 508.227 to read as follows:

27       Sec. 508.227. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF  
28 CRIMINAL STREET GANG. (a) This section applies only to a  
29 releasee who:

30           (1) is identified as a member of a criminal street  
31 gang in an intelligence database established under Chapter 61,  
32 Code of Criminal Procedure; and

1           (2) has three or more times been convicted of, or  
2   received a grant of deferred adjudication community supervision  
3   or another functionally equivalent form of community supervision  
4   or probation for, a felony offense under the laws of this state,  
5   another state, or the United States.

6           (b) A parole panel may require as a condition of release  
7   on parole or to mandatory supervision that a releasee described  
8   by Subsection (a) submit to tracking under an electronic  
9   monitoring service or other appropriate technological service  
10   designed to track a person's location.

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

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

18                   (1) an offense:

19                           (A) under Section 49.07 or 49.08, regardless of  
20   whether the accused is convicted of violations of the same  
21   section more than once or is convicted of violations of both  
22   sections; or

23                           (B) for which a plea agreement was reached in a  
24   case in which the accused was charged with more than one offense  
25   listed in Paragraph (A), regardless of whether the accused is  
26   charged with violations of the same section more than once or is  
27   charged with violations of both sections;

28                   (2) an offense:

29                           (A) under Section 33.021 or an offense under  
30   Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed  
31   against a victim younger than 17 years of age at the time of the  
32   commission of the offense regardless of whether the accused is

1 convicted of violations of the same section more than once or is  
2 convicted of violations of more than one section; or

3 (B) for which a plea agreement was reached in a  
4 case in which the accused was charged with more than one offense  
5 listed in Paragraph (A) committed against a victim younger than  
6 17 years of age at the time of the commission of the offense  
7 regardless of whether the accused is charged with violations of  
8 the same section more than once or is charged with violations of  
9 more than one section; ~~[or]~~

10 (3) an offense:

11 (A) under Section 21.15 or 43.26, regardless of  
12 whether the accused is convicted of violations of the same  
13 section more than once or is convicted of violations of both  
14 sections; or

15 (B) for which a plea agreement was reached in a  
16 case in which the accused was charged with more than one offense  
17 listed in Paragraph (A), regardless of whether the accused is  
18 charged with violations of the same section more than once or is  
19 charged with violations of both sections; or

20 (4) an offense for which the judgment in the case  
21 contains an affirmative finding under Article 42.0197, Code of  
22 Criminal Procedure.

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

26 SECTION \_\_\_\_\_. Section 9, Article 42.01, Code of Criminal  
27 Procedure, and Article 42.0197, Code of Criminal Procedure, as  
28 added by this Act, apply only to a judgment of conviction  
29 entered on or after the effective date of this Act.

30 SECTION \_\_\_\_\_. Subsection (a), Section 11, Article 42.12,  
31 Code of Criminal Procedure, as amended by this Act, and Section  
32 13E, Article 42.12, Code of Criminal Procedure, as added by this

1 Act, apply only to a person who is placed on community  
2 supervision for an offense committed on or after the effective  
3 date of this Act. A person who is placed on community  
4 supervision for an offense committed before the effective date  
5 of this Act is governed by the law in effect on the date the  
6 offense was committed, and the former law is continued in effect  
7 for that purpose. For purposes of this section, an offense was  
8 committed before the effective date of this Act if any element  
9 of the offense occurred before that date.

10 SECTION \_\_\_\_\_. Section 54.0491, Family Code, as added by  
11 this Act, applies only to conduct that violates a penal law of  
12 this state and that occurs on or after the effective date of  
13 this Act. Conduct that violates a penal law of this state and  
14 that occurs before the effective date of this Act is covered by  
15 the law in effect at the time the conduct occurred, and the  
16 former law is continued in effect for that purpose. For  
17 purposes of this section, conduct occurs before the effective  
18 date of this Act if each element of the violation occurred  
19 before that date.

20 SECTION \_\_\_\_\_. Section 508.227, Government Code, as added by  
21 this Act, applies only to a person released on parole or to  
22 mandatory supervision for an offense committed on or after the  
23 effective date of this Act. A person released on parole or to  
24 mandatory supervision for an offense committed before the  
25 effective date of this Act is governed by the law in effect on  
26 the date the offense was committed, and the former law is  
27 continued in effect for that purpose. For purposes of this  
28 section, an offense was committed before the effective date of  
29 this Act if any element of the offense occurred before that  
30 date.

31 SECTION \_\_\_\_\_. Subsection (b), Section 3.03, Penal Code, as  
32 amended by this Act, applies only to an offense committed on or



1 after the effective date of this Act. An offense committed  
2 before the effective date of this Act is covered by the law in  
3 effect when the offense was committed, and the former law is  
4 continued in effect for that purpose. For purposes of this  
5 section, an offense was committed before the effective date of  
6 this Act if any element of the offense occurred before that  
7 date.

8 SECTION \_\_\_\_\_. Subchapter C, Chapter 101, Civil Practice and  
9 Remedies Code, is amended by adding Section 101.067 to read as  
10 follows:

11 Sec. 101.067. GRAFFITI REMOVAL. This chapter does not  
12 apply to a claim for property damage caused by the removal of  
13 graffiti under Section 250.006, Local Government Code.

14 SECTION \_\_\_\_\_. Subsections (a) and (c), Article 102.0171,  
15 Code of Criminal Procedure, are amended to read as follows:

16 (a) A defendant convicted of an offense under Section  
17 28.08, Penal Code, in a county court, county court at law, or  
18 district court shall pay a [~~\$50~~] juvenile delinquency prevention  
19 and graffiti eradication fee as a cost of court. The amount of  
20 the fee under this section must be not less than \$50 or more  
21 than \$500. In setting the amount of the fee, the court shall  
22 increase the fee based on the amount of pecuniary loss in the  
23 case and the number of times the defendant has been previously  
24 convicted of an offense under Section 28.08, Penal Code.

25 (c) The clerks of the respective courts shall collect the  
26 costs and pay them to the county treasurer or to any other  
27 official who discharges the duties commonly delegated to the  
28 county treasurer for deposit in a fund to be known as the county  
29 juvenile delinquency prevention fund. A fund designated by this  
30 subsection may be used only to:

31 (1) repair damage caused by the commission of  
32 offenses under Section 28.08, Penal Code;

1           (2) provide educational and intervention programs and  
2 materials, including printed educational materials for  
3 distribution to primary and secondary school students, designed  
4 to prevent individuals from committing offenses under Section  
5 28.08, Penal Code;

6           (3) provide to the public rewards for identifying and  
7 aiding in the apprehension and prosecution of offenders who  
8 commit offenses under Section 28.08, Penal Code;

9           (4) provide funding for teen recognition and teen  
10 recreation programs;

11           (5) provide funding for local teen court programs;

12           (6) provide funding for the local juvenile probation  
13 department; ~~and~~

14           (7) provide educational and intervention programs  
15 designed to prevent juveniles from engaging in delinquent  
16 conduct; and

17           (8) provide funding for community art programs.

18       SECTION \_\_\_\_\_. Subsection (a), Section 54.0461, Family Code,  
19 is amended to read as follows:

20       (a) If a child is adjudicated as having engaged in  
21 delinquent conduct that violates Section 28.08, Penal Code, the  
22 juvenile court shall order the child, parent, or other person  
23 responsible for the child's support to pay to the court a ~~[\$50]~~  
24 juvenile delinquency prevention fee as a cost of court. The  
25 amount of the fee under this section must be not less than \$50  
26 or more than \$500. In setting the amount of the fee, the court  
27 shall increase the fee based on the amount of pecuniary loss  
28 resulting from the conduct and the number of times the child has  
29 been previously adjudicated as having engaged in delinquent  
30 conduct violating Section 28.08, Penal Code.

1       SECTION \_\_\_\_\_. Section 102.041, Government Code, as amended  
2 by Chapter 921 (H.B. 3167), Acts of the 80th Legislature,  
3 Regular Session, 2007, is amended to read as follows:

4       Sec. 102.041. ADDITIONAL COURT COSTS ON CONVICTION IN  
5 DISTRICT COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a  
6 district court shall collect fees and costs under the Code of  
7 Criminal Procedure on conviction of a defendant as follows:

8           (1) a jury fee (Art. 102.004, Code of Criminal  
9 Procedure) ... \$20;

10          (2) a fee for clerk of the court services (Art.  
11 102.005, Code of Criminal Procedure) ... \$40;

12          (3) a records management and preservation services  
13 fee (Art. 102.005, Code of Criminal Procedure) ... \$25;

14          (4) a security fee on a felony offense (Art. 102.017,  
15 Code of Criminal Procedure) ... \$5;

16          (5) a security fee on a misdemeanor offense (Art.  
17 102.017, Code of Criminal Procedure) ... \$3; and

18          (6) a juvenile delinquency prevention and graffiti  
19 eradication fee (Art. 102.0171, Code of Criminal Procedure) ...  
20 not less than \$50 or more than \$500 [~~\$5~~].

21       SECTION \_\_\_\_\_. Section 102.061, Government Code, as amended  
22 by Chapter 921 (H.B. 3167), Acts of the 80th Legislature,  
23 Regular Session, 2007, is amended to read as follows:

24       Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN  
25 STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk  
26 of a statutory county court shall collect fees and costs under  
27 the Code of Criminal Procedure on conviction of a defendant as  
28 follows:

29           (1) a jury fee (Art. 102.004, Code of Criminal  
30 Procedure) ... \$20;

31           (2) a fee for services of the clerk of the court  
32 (Art. 102.005, Code of Criminal Procedure) ... \$40;

1           (3) a records management and preservation services  
2 fee (Art. 102.005, Code of Criminal Procedure) ... \$25;

3           (4) a security fee on a misdemeanor offense (Art.  
4 102.017, Code of Criminal Procedure) ... \$3;

5           (5) a juvenile delinquency prevention and graffiti  
6 eradication fee (Art. 102.0171, Code of Criminal Procedure) ...  
7 not less than \$50 or more than \$500 [~~\$5~~]; and

8           (6) a juvenile case manager fee (Art. 102.0174, Code  
9 of Criminal Procedure) ... not to exceed \$5.

10          SECTION \_\_\_\_\_. Section 102.081, Government Code, as amended  
11 by Chapter 921 (H.B. 3167), Acts of the 80th Legislature,  
12 Regular Session, 2007, is amended to read as follows:

13          Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN  
14 COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county  
15 court shall collect fees and costs under the Code of Criminal  
16 Procedure on conviction of a defendant as follows:

17           (1) a jury fee (Art. 102.004, Code of Criminal  
18 Procedure) ... \$20;

19           (2) a fee for clerk of the court services (Art.  
20 102.005, Code of Criminal Procedure) ... \$40;

21           (3) a records management and preservation services  
22 fee (Art. 102.005, Code of Criminal Procedure) ... \$25;

23           (4) a security fee on a misdemeanor offense (Art.  
24 102.017, Code of Criminal Procedure) ... \$3;

25           (5) a juvenile delinquency prevention and graffiti  
26 eradication fee (Art. 102.0171, Code of Criminal Procedure) ...  
27 not less than \$50 or more than \$500 [~~\$5~~]; and

28           (6) a juvenile case manager fee (Art. 102.0174, Code  
29 of Criminal Procedure) ... not to exceed \$5.

30          SECTION \_\_\_\_\_. Section 103.0212, Government Code, is amended  
31 to read as follows:

1       Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR  
2 CIVIL CASES: FAMILY CODE. An accused or defendant, or a party  
3 to a civil suit, as applicable, shall pay the following fees and  
4 costs under the Family Code if ordered by the court or otherwise  
5 required:

6           (1) in family matters:

7           (A) issuing writ of withholding (Sec. 8.262,  
8 Family Code) ... \$15;

9           (B) filing copy of writ of withholding to  
10 subsequent employer (Sec. 8.267, Family Code) ... \$15;

11           (C) issuing and delivering modified writ of  
12 withholding or notice of termination (Sec. 8.302, Family Code) ...  
13 \$15;

14           (D) issuing and delivering notice of termination  
15 of withholding (Sec. 8.303, Family Code) ... \$15;

16           (E) issuance of change of name certificate (Sec.  
17 45.106, Family Code) ... \$10;

18           (F) protective order fee (Sec. 81.003, Family  
19 Code) ... \$16;

20           (G) filing suit requesting adoption of child  
21 (Sec. 108.006, Family Code) ... \$15;

22           (H) filing fees for suits affecting parent-child  
23 relationship (Sec. 110.002, Family Code):

24           (i) suit or motion for modification (Sec.  
25 110.002, Family Code) ... \$15;

26           (ii) motion for enforcement (Sec. 110.002,  
27 Family Code) ... \$15;

28           (iii) notice of application for judicial  
29 writ of withholding (Sec. 110.002, Family Code) ... \$15;

30           (iv) motion to transfer (Sec. 110.002,  
31 Family Code) ... \$15;

1 (v) petition for license suspension (Sec.  
2 110.002, Family Code) ... \$15;

3 (vi) motion to revoke a stay of license  
4 suspension (Sec. 110.002, Family Code) ... \$15; and

5 (vii) motion for contempt (Sec. 110.002,  
6 Family Code) ... \$15;

7 (I) order or writ of income withholding to be  
8 delivered to employer (Sec. 110.004, Family Code) ... not to  
9 exceed \$15;

10 (J) filing fee for transferred case (Sec.  
11 110.005, Family Code) ... \$45;

12 (K) filing a writ of withholding (Sec. 158.319,  
13 Family Code) ... \$15;

14 (L) filing a request for modified writ of  
15 withholding or notice of termination (Sec. 158.403, Family Code)  
16 ... not to exceed \$15;

17 (M) filing an administrative writ to employer  
18 (Sec. 158.503, Family Code) ... not to exceed \$15; and

19 (N) genetic testing fees in relation to a child  
20 born to a gestational mother (Sec. 160.762, Family Code) ... as  
21 assessed by the court; and

22 (2) in juvenile court:

23 (A) fee schedule for deferred prosecution  
24 services (Sec. 53.03, Family Code) ... maximum fee of \$15 a month;

25 (B) a request fee for a teen court program  
26 [administration fee] (Sec. 54.032, Family Code) ... \$20, if the  
27 court ordering the fee is located in the Texas-Louisiana border  
28 region, but otherwise not to exceed \$10;

29 (C) court costs for juvenile probation diversion  
30 fund (Sec. 54.0411, Family Code) ... \$20;

(D) a juvenile delinquency prevention fee (Sec. 54.0461, Family Code) ... not less than \$50 or more than \$500 [~~\$5~~]; [~~and~~]

(E) a court fee for child's probationary period (Sec. 54.061, Family Code) ... not to exceed \$15 a month; and

(F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10.

SECTION \_\_\_\_\_. Subsection (a), Section 485.018, Health and Safety Code, is amended to read as follows:

(a) A political subdivision or an agency of this state may not enact an ordinance or rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

SECTION \_\_\_\_\_. Chapter 250, Local Government Code, is amended by adding Section 250.006 to read as follows:

Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by Subsection (h), a county by order or a municipality by ordinance may require the owner of property within the jurisdiction of the county or municipality to remove graffiti from the owner's property on receipt of notice from the county or municipality.

(b) The order or ordinance must provide that a county or municipality may not give notice to a property owner under Subsection (a) unless:

(1) the county or municipality has offered to remove the graffiti from the owner's property free of charge; and

(2) the property owner has refused the offer.

1       (c) The order or ordinance must require a property owner  
2 to remove the graffiti on or before the 15th day after the date  
3 the property owner receives notice under Subsection (a). If the  
4 property owner fails to remove the graffiti on or before the  
5 15th day after the date of receipt of the notice, the county or  
6 municipality may remove the graffiti and charge the expenses of  
7 removal to the property owner in accordance with a fee schedule  
8 adopted by the county or municipality.

9       (d) The notice required by Subsection (a) must be given:

10           (1) personally to the owner in writing;

11           (2) by letter sent by certified mail, addressed to  
12 the property owner at the property owner's address as contained  
13 in the records of the appraisal district in which the property  
14 is located; or

15           (3) if service cannot be obtained under Subdivision  
16 (1) or (2):

17                   (A) by publication at least once in a newspaper  
18 of general circulation in the county or municipality;

19                   (B) by posting the notice on or near the front  
20 door of each building on the property to which the notice  
21 relates; or

22                   (C) by posting the notice on a placard attached  
23 to a stake driven into the ground on the property to which the  
24 notice relates.

25       (e) The county or municipality may assess expenses  
26 incurred under Subsection (c) against the property on which the  
27 work is performed to remove the graffiti.

28       (f) To obtain a lien against the property for expenses  
29 incurred under Subsection (c), the governing body of the county  
30 or municipality must file a statement of expenses with the  
31 county clerk. The statement of expenses must contain:

32           (1) the name of the property owner, if known;



1           (2) the legal description of the property; and

2           (3) the amount of expenses incurred under Subsection

3 (c).

4           (g) A lien described by Subsection (f) attaches to the  
5 property on the date on which the statement of expenses is filed  
6 in the real property records of the county in which the property  
7 is located and is subordinate to:

8           (1) any previously recorded lien; and

9           (2) the rights of a purchaser or lender for value who  
10 acquires an interest in the property subject to the lien before  
11 the statement of expenses is filed as described by Subsection  
12 (f).

13           (h) An order or ordinance described by this section must  
14 include an exception from the requirement that an owner of  
15 property remove graffiti from the owner's property if:

16           (1) the graffiti is located on transportation  
17 infrastructure; and

18           (2) the removal of the graffiti would create a hazard  
19 for the person performing the removal.

20           SECTION \_\_\_\_ Chapter 30, Penal Code, is amended by adding  
21 Section 30.021 to read as follows:

22           Sec. 30.021. BURGLARY OF BUILDING TO CREATE GRAFFITI. (a)

23 A person commits an offense if, without the effective consent of  
24 the owner, the person:

25           (1) enters a building, or any portion of a building,  
26 not then open to the public, with the intent to commit an  
27 offense under Section 28.08;

28           (2) remains concealed, with the intent to commit an  
29 offense under Section 28.08, in a building; or

30           (3) enters a building and commits or attempts to  
31 commit an offense under Section 28.08.

1       (b) For purposes of this section, "enter" has the meaning  
2       assigned by Section 30.02.

3       (c) An offense under this section is a state jail felony.

4       SECTION \_\_\_\_\_. Section 101.067, Civil Practice and Remedies  
5       Code, as added by this Act, applies only to a cause of action  
6       that accrues on or after the effective date of this Act. A  
7       cause of action that accrued before the effective date of this  
8       Act is governed by the law in effect immediately before the  
9       effective date of this Act, and that law is continued in effect  
10      for that purpose.

11      SECTION \_\_\_\_\_. Subsections (a) and (c), Article 102.0171,  
12      Code of Criminal Procedure, and Sections 102.041, 102.061, and  
13      102.081, Government Code, as amended by this Act, apply only to  
14      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  
17      the former law is continued in effect for that purpose. For  
18      purposes of this section, an offense was committed before the  
19      effective date of this Act if any element of the offense  
20      occurred before that date.

21      SECTION \_\_\_\_\_. Subsection (a), Section 54.0461, Family Code,  
22      and Section 103.0212, Government Code, as amended by this Act,  
23      apply only to conduct that violates a penal law of this state  
24      and that occurs on or after the effective date of this Act.  
25      Conduct that violates a penal law of this state and that occurs  
26      before the effective date of this Act is covered by the law in  
27      effect at the time the conduct occurred, and the former law is  
28      continued in effect for that purpose. For purposes of this  
29      section, conduct occurs before the effective date of this Act if  
30      each element of the violation occurred before that date.

31      SECTION \_\_\_\_\_. Section 37.10, Penal Code, is amended by  
32      adding Subsection (j) to read as follows:

1       (j) It is not a defense to prosecution under Subsection  
2       (a) (2) that the record, document, or thing made, presented, or  
3       used displays or contains the statement "NOT A GOVERNMENT  
4       DOCUMENT" or another substantially similar statement intended to  
5       alert a person to the falsity of the record, document, or thing,  
6       unless the record, document, or thing displays the statement  
7       diagonally printed clearly and indelibly on both the front and  
8       back of the record, document, or thing in solid red capital  
9       letters at least one-fourth inch in height.

10       SECTION \_\_\_\_\_. Section 521.454, Transportation Code, is  
11 amended by adding Subsection (d) to read as follows:

12       (d) If conduct constituting an offense under this section  
13       also constitutes an offense under another law, the actor may be  
14       prosecuted under this section, the other law, or both.

15       SECTION \_\_\_\_\_. Section 521.455, Transportation Code, is  
16 amended by adding Subsection (c) to read as follows:

17       (c) If conduct constituting an offense under this section  
18       also constitutes an offense under another law, the actor may be  
19       prosecuted under this section, the other law, or both.

20       SECTION \_\_\_\_\_. Section 521.456, Transportation Code, is  
21 amended by adding Subsection (e) to read as follows:

22       (e) If conduct constituting an offense under this section  
23       also constitutes an offense under another law, the actor may be  
24       prosecuted under this section, the other law, or both.

25       SECTION \_\_\_\_\_. Subsection (j), Section 37.10, Penal Code,  
26 and Subsection (d), Section 521.454, Subsection (c), Section  
27 521.455, and Subsection (e), Section 521.456, Transportation  
28 Code, as added by this Act, apply only to an offense committed  
29 on or after the effective date of this Act. An offense  
30 committed before the effective date of this Act is covered by  
31 the law in effect when the offense was committed, and the former  
32 law is continued in effect for that purpose. For purposes of

1 this section, an offense was committed before the effective date  
2 of this Act if any element of the offense occurred before that  
3 date.

4 SECTION \_\_\_\_ Chapter 46, Penal Code, is amended by adding  
5 Section 46.14 to read as follows:

6 Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an  
7 offense if the person knowingly engages in the business of  
8 transporting or transferring a firearm that the person knows was  
9 acquired in violation of the laws of any state or of the United  
10 States. For purposes of this subsection, a person is considered  
11 to engage in the business of transporting or transferring a  
12 firearm if the person engages in that conduct:

13 (1) on more than one occasion; or

14 (2) for profit or any other form of remuneration.

15 (b) An offense under this section is a felony of the third  
16 degree, unless it is shown on the trial of the offense that the  
17 offense was committed with respect to three or more firearms in  
18 a single criminal episode, in which event the offense is a  
19 felony of the second degree.

20 (c) This section does not apply to a peace officer who is  
21 engaged in the actual discharge of an official duty.

22 (d) If conduct that constitutes an offense under this  
23 section also constitutes an offense under any other law, the  
24 actor may be prosecuted under this section, the other law, or  
25 both.

26 SECTION \_\_\_\_ Article 61.02, Code of Criminal Procedure, is  
27 amended by amending Subsection (c) and adding Subsections (d)  
28 and (e) to read as follows:

29 (c) Criminal information collected under this chapter  
30 relating to a criminal street gang must:

1           (1) be relevant to the identification of an  
2 organization that is reasonably suspected of involvement in  
3 criminal activity; and

4           (2) consist of:

5           (A) a judgment under any law that includes, as a  
6 finding or as an element of a criminal offense, participation in  
7 a criminal street gang;

8           (B) a self-admission by the individual of  
9 criminal street gang membership that is made during a judicial  
10 proceeding; or

11           (C) except as provided by Subsection (d), any  
12 two of the following:

13           (i) a self-admission by the individual of  
14 criminal street gang membership that is not made during a  
15 judicial proceeding, including the use of the Internet or other  
16 electronic format or medium to post photographs or other  
17 documentation identifying the individual as a member of a  
18 criminal street gang;

19           (ii) an identification of the individual as  
20 a criminal street gang member by a reliable informant or other  
21 individual;

22           (iii) a corroborated identification of the  
23 individual as a criminal street gang member by an informant or  
24 other individual of unknown reliability;

25           (iv) evidence that the individual frequents  
26 a documented area of a criminal street gang and associates with  
27 known criminal street gang members;

28           (v) evidence that the individual uses, in  
29 more than an incidental manner, criminal street gang dress, hand  
30 signals, tattoos, or symbols, including expressions of letters,  
31 numbers, words, or marks, regardless of how or the means by ~~the~~  
32 ~~format or medium in~~ which the symbols are displayed, that are

1 associated with a criminal street gang that operates in an area  
2 frequented by the individual and described by Subparagraph (iv);  
3 ~~[or]~~

4 (vi) evidence that the individual has been  
5 arrested or taken into custody with known criminal street gang  
6 members for an offense or conduct consistent with criminal  
7 street gang activity;

8 (vii) evidence that the individual has  
9 visited a known criminal street gang member, other than a family  
10 member of the individual, while the gang member is confined in  
11 or committed to a penal institution; or

12 (viii) evidence of the individual's use of  
13 technology, including the Internet, to recruit new criminal  
14 street gang members.

15 (d) Evidence described by Subsections (c)(2)(C)(iv) and  
16 (vii) is not sufficient to create the eligibility of a person's  
17 information to be included in an intelligence database described  
18 by this chapter unless the evidence is combined with information  
19 described by another subparagraph of Subsection (c)(2)(C).

20 (e) In this article:

21 (1) "Family member" means a person related to another  
22 person within the third degree by consanguinity or affinity, as  
23 described by Subchapter B, Chapter 573, Government Code, except  
24 that the term does not include a person who is considered to be  
25 related to another person by affinity only as described by  
26 Section 573.024(b), Government Code.

27 (2) "Penal institution" means a confinement facility  
28 operated by or under a contract with any division of the Texas  
29 Department of Criminal Justice, a confinement facility operated  
30 by or under contract with the Texas Youth Commission, or a  
31 juvenile secure pre-adjudication or post-adjudication facility

1 operated by or under a local juvenile probation department, or a  
2 county jail.

3 SECTION \_\_\_\_\_. Subsection (b), Article 61.06, Code of  
4 Criminal Procedure, is amended to read as follows:

5 (b) Subject to Subsection (c), information collected under  
6 this chapter relating to a criminal street gang must be removed  
7 from an intelligence database established under Article 61.02  
8 and the intelligence database maintained by the department under  
9 Article 61.03 after five [~~three~~] years if:

10 (1) the information relates to the investigation or  
11 prosecution of criminal activity engaged in by an individual  
12 other than a child; and

13 (2) the individual who is the subject of the  
14 information has not been arrested for criminal activity reported  
15 to the department under Chapter 60.

16 SECTION \_\_\_\_\_. Subsection (c), Article 61.06, Code of  
17 Criminal Procedure, as amended by Chapters 258 (S.B. 11), 263  
18 (S.B. 103), and 1308 (S.B. 909), Acts of the 80th Legislature,  
19 Regular Session, 2007, is reenacted and amended to read as  
20 follows:

21 (c) In determining whether information is required to be  
22 removed from an intelligence database under Subsection (b), the  
23 five-year [~~three-year~~] period does not include any period during  
24 which the individual who is the subject of the information is:

25 (1) confined in a correctional facility operated by  
26 or under contract with the Texas Department of Criminal Justice;

27 (2) committed to a secure correctional facility  
28 operated by or under contract with the Texas Youth Commission,  
29 as defined by Section 51.02, Family Code; or

30 (3) confined in a county jail or confined in or  
31 committed to a facility operated by a juvenile board in lieu of  
32 being confined in a correctional facility operated by or under

1 contract with the Texas Department of Criminal Justice or being  
2 committed to a secure correctional facility operated by or under  
3 contract with the Texas Youth Commission.

4 SECTION \_\_\_\_\_. Article 61.06, Code of Criminal Procedure, as  
5 amended by this Act, applies to any applicable information  
6 maintained in an intelligence database under Chapter 61 of that  
7 code on or after the effective date of this Act.

8 SECTION \_\_\_\_\_. Subsection (a), Section 521.343,  
9 Transportation Code, is amended to read as follows:

10 (a) Except as provided by Sections 521.342(b), 521.344(a),  
11 (b), (d), (e), (f), (g), (h), and (i), 521.345, 521.346,  
12 521.3465, ~~[and]~~ 521.351, and 521.352, a suspension under this  
13 subchapter is for one year.

14 SECTION \_\_\_\_\_. Subchapter O, Chapter 521, Transportation  
15 Code, is amended by adding Section 521.352 to read as follows:

16 Sec. 521.352. SUSPENSION OR PROHIBITION FOR CERTAIN  
17 ORGANIZED CRIME OFFENSES. (a) A person's license is  
18 automatically suspended on conviction of the person for an  
19 offense under Chapter 71, Penal Code.

20 (b) The department may not issue a driver's license to a  
21 person convicted of an offense specified in Subsection (a) who,  
22 on the date of the conviction, did not hold a license.

23 (c) The period of license suspension or prohibition under  
24 this section begins on a date set by the court that is not  
25 earlier than the date of conviction or later than the 30th day  
26 after the date of conviction. The period of license suspension  
27 or prohibition under this section expires on the first  
28 anniversary of the date the suspension or prohibition began.

29 SECTION \_\_\_\_\_. Section 521.457, Transportation Code, is  
30 amended by amending Subsection (e) and adding Subsection (f-2)  
31 to read as follows:



1 (e) Except as provided by Subsections (f), ~~[and]~~ (f-1),  
2 and (f-2), an offense under this section is a Class C  
3 misdemeanor.

4 (f-2) If it is shown on the trial of an offense under this  
5 section that the person operated a motor vehicle on a highway  
6 during a period that the person's driver's license was suspended  
7 under Section 521.352 or the person was prohibited from  
8 obtaining a driver's license under that section, the offense is  
9 a Class A misdemeanor.

10 SECTION \_\_\_\_\_. (a) The change in law made by this Act to  
11 Section 521.352, Transportation Code, as added by this Act, and  
12 Section 521.457, Transportation Code, as amended by this Act,  
13 applies only to an offense committed on or after the effective  
14 date of this Act.

15 (b) An offense committed before the effective date of this  
16 Act is covered by the law in effect when the offense was  
17 committed, and the former law is continued in effect for that  
18 purpose. For purposes of this subsection, an offense was  
19 committed before the effective date of this Act if any element  
20 of the offense was committed before that date.

21 SECTION \_\_\_\_\_. Article 18.20, Code of Criminal Procedure, is  
22 amended by adding Section 9A to read as follows:

23 Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED  
24 PERSON. (a) The requirements of Sections 8(a)(2)(B) and  
25 9(b)(2) relating to the specification of the facilities from  
26 which or the place where a communication is to be intercepted do  
27 not apply if:

28 (1) in the case of an application for an order  
29 authorizing the interception of an oral communication:

30 (A) the application contains a full and complete  
31 statement as to why the specification is not practical and

1 identifies the person committing or believed to be committing  
2 the offense and whose communications are to be intercepted; and

3 (B) a judge of competent jurisdiction finds that  
4 the specification is not practical; and

5 (2) in the case of an application for an order  
6 authorizing the interception of a wire or electronic  
7 communication:

8 (A) the application identifies the person  
9 committing or believed to be committing the offense and whose  
10 communications are to be intercepted;

11 (B) a judge of competent jurisdiction finds that  
12 the applicant has made an adequate showing of probable cause to  
13 believe that the actions of the person identified in the  
14 application could have the effect of thwarting interception from  
15 a specified facility; and

16 (C) the authority to intercept a wire or  
17 electronic communication under the order is limited to a period  
18 in which it is reasonable to presume that the person identified  
19 in the application will be reasonably proximate to the  
20 interception device.

21 (b) A person implementing an order authorizing the  
22 interception of an oral communication that, in accordance with  
23 this section, does not specify the facility from which or the  
24 place where a communication is to be intercepted may begin  
25 interception only after the person ascertains the place where  
26 the communication is to be intercepted.

27 (c) A provider of wire or electronic communications that  
28 receives an order authorizing the interception of a wire or  
29 electronic communication that, in accordance with this section,  
30 does not specify the facility from which or the place where a  
31 communication is to be intercepted may move the court to modify  
32 or quash the order on the ground that the provider's assistance

1 with respect to the interception cannot be performed in a timely  
2 or reasonable fashion. On notice to the state, the court shall  
3 decide the motion expeditiously.

4 SECTION \_\_\_\_\_. Subchapter A, Chapter 411, Government Code,  
5 is amended by adding Section 411.0207 to read as follows:

6 Sec. 411.0207. PUBLIC CORRUPTION UNIT. (a) In this  
7 section, "organized criminal activity" means conduct that  
8 constitutes an offense under Section 71.02, Penal Code.

9 (b) A public corruption unit is created within the  
10 department to investigate and assist in the management of  
11 allegations of participation in organized criminal activity by:

12 (1) an individual elected, appointed, or employed to  
13 serve as a peace officer for a governmental entity of this state  
14 under Article 2.12, Code of Criminal Procedure; or

15 (2) a federal law enforcement officer while  
16 performing duties in this state.

17 (c) The unit shall:

18 (1) assist district attorneys and county attorneys in  
19 the investigation and prosecution of allegations described by  
20 Subsection (b);

21 (2) if requested by the agency, assist a state or  
22 local law enforcement agency with the investigation of such  
23 allegations against law enforcement officers in the agency;

24 (3) assist the United States Department of Justice or  
25 any other appropriate federal department or agency in the  
26 investigation and prosecution of allegations described by  
27 Subsection (b);

28 (4) if requested by the agency, assist a federal law  
29 enforcement agency with the investigation of such allegations  
30 against law enforcement officers in the agency;

1           (5) serve as a clearinghouse for information relating  
2 to the investigation and prosecution of allegations described by  
3 Subsection (b); and

4           (6) report to the highest-ranking officer of the  
5 Texas Rangers division of the department.

6           (d) On written approval of the director or of the chair of  
7 the commission, the highest-ranking officer of the Texas Rangers  
8 division of the department may initiate an investigation of an  
9 allegation of participation in organized criminal activity by a  
10 law enforcement officer described by Subsection (b)(1). Written  
11 approval under this subsection must be based on cause.

12           (e) To the extent allowed by law, a state or local law  
13 enforcement agency shall cooperate with the public corruption  
14 unit by providing information requested by the unit as necessary  
15 to carry out the purposes of this section. Information  
16 described by this subsection is excepted from required  
17 disclosure under Chapter 552 in the manner provided by Section  
18 552.108.

19           SECTION \_\_\_\_\_. Section 421.082, Government Code, is amended  
20 by adding Subsections (e), (f), and (g) to read as follows:

21           (e) The center shall annually submit to the governor and  
22 the legislature a report regarding criminal street gangs and  
23 gang-related crime. The report must include:

24                   (1) an evaluation of the threat that criminal street  
25 gangs and gang-related crime pose to communities in this state  
26 that are at or near the international border between this state  
27 and the United Mexican States;

28                   (2) an evaluation of the threat that criminal street  
29 gangs and gang-related crime occurring at or near the border  
30 pose to other areas of this state;

31                   (3) identification of any law enforcement strategies  
32 in this state or another jurisdiction that have been effective

1 in preventing the growth or proliferation of criminal street  
2 gangs or gang-related crime; and

3 (4) recommendations on actions that may be taken to:

4 (A) prevent criminal street gangs from  
5 committing human trafficking offenses;

6 (B) reduce criminal street gang violence  
7 throughout this state, with specific recommendations concerning  
8 reduction of criminal street gang violence at or near the  
9 border;

10 (C) prevent the growth or proliferation of  
11 criminal street gangs throughout this state, with specific  
12 recommendations concerning prevention of the growth or  
13 proliferation of criminal street gangs at or near the border;  
14 and

15 (D) ensure that law enforcement personnel  
16 receive the necessary training and education to effectively deal  
17 with the problems created by criminal street gangs and gang-  
18 related crime.

19 (f) On request, a criminal justice or juvenile justice  
20 agency of this state shall provide to the center information  
21 relating to criminal street gangs and gang-related crime.

22 (g) The report required under Subsection (e) may not  
23 contain any information that:

24 (1) is considered sensitive intelligence information  
25 by the agency that provided the information; or

26 (2) could jeopardize an ongoing investigation being  
27 conducted by the agency that provided the information.

28 SECTION \_\_\_\_ . Chapter 772, Government Code, is amended by  
29 adding Section 772.007 to read as follows:

30 Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM. (a) The  
31 criminal justice division established under Section 772.006  
32 shall administer a competitive grant program to support

1 regional, multidisciplinary approaches to combat gang violence  
2 through the coordination of gang prevention, intervention, and  
3 suppression activities.

4 (b) The grant program administered under this section must  
5 be directed toward regions of this state that have demonstrably  
6 high levels of gang violence.

7 (c) The criminal justice division shall award grants to  
8 qualified applicants, as determined by the division, that  
9 demonstrate a comprehensive approach that balances gang  
10 prevention, intervention, and suppression activities to reduce  
11 gang violence.

12 (d) The criminal justice division shall include in the  
13 biennial report required by Section 772.006(a)(9) detailed  
14 reporting of the results and performance of the grant program  
15 administered under this section.

16 (e) The criminal justice division may use any revenue  
17 available for purposes of this section.

18 SECTION \_\_\_\_\_. Section 9A, Article 18.20, Code of Criminal  
19 Procedure, as added by this Act, applies only to an application  
20 for an order authorizing the interception of a wire, oral, or  
21 electronic communication that is submitted on or after the  
22 effective date of this Act. An application that was submitted  
23 before the effective date of this Act is covered by the law in  
24 effect on the date the application was submitted, and the former  
25 law is continued in effect for that purpose.

26 SECTION \_\_\_\_\_. Not later than December 1, 2010, the  
27 Department of Public Safety shall establish the public  
28 corruption unit under Section 411.0207, Government Code, as  
29 added by this Act.

30 SECTION \_\_\_\_\_. The Texas Fusion Center shall submit the  
31 first annual report regarding criminal street gangs and gang-  
32 related crime to the governor and the legislature as required by

1 Subsection (e), Section 421.082, Government Code, as added by  
2 this Act, not later than September 1, 2010.

3 SECTION \_\_\_\_\_. To the extent of any conflict, this Act  
4 prevails over another Act of the 81st Legislature, Regular  
5 Session, 2009, relating to nonsubstantive additions to and  
6 corrections in enacted codes.

7 SECTION \_\_\_\_\_. Notwithstanding any other provision of this  
8 Act, Sections 37.110 and 51.973, Education Code, and Section  
9 42.064, Human Resources Code, as added by this Act, take effect  
10 immediately if this Act receives a vote of two-thirds of all the  
11 members elected to each house, as provided by Section 39,  
12 Article III, Texas Constitution. If this Act does not receive  
13 the vote necessary for immediate effect, those sections of the  
14 Education Code and Human Resources Code take effect September 1,  
15 2009.

# ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 3

*Atay Spaw*  
Secretary of the Senate

BY: *Robley Ellis*

Amend C.S.H.B. No. 2086 (senate committee printing) by adding an appropriately numbered SECTION to the article to read as follows and by renumbering existing SECTIONS of the article accordingly:

SECTION 9.\_\_\_\_. (a) The Legislative Budget Board shall prepare an annual criminal justice policy impact statement for this Act.

(b) The impact statement must include information concerning:

(1) the number of arrests and resulting criminal dispositions under this Act;

(2) the fiscal impact of arrests, trials, convictions, and imprisoning or imposing other sanctions on persons in accordance with this Act;

(3) the race and ethnicity of persons arrested, prosecuted, convicted, and incarcerated under this Act;

(4) the impact of this Act on existing correctional facilities, as defined by Section 1.07, Penal Code;

(5) the likelihood that this Act may create a need for additional prison capacity;

(6) civil action damages assessed and collected, and assets seized and forfeited under this Act; and

(7) any other matter the Legislative Budget Board determines relevant.

(c) The Legislative Budget Board shall complete the impact statement not later than December 1 each year, beginning December 1, 2010, and make it available to the public on its website.



LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity. ), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2086, As Passed 2nd House: a negative impact of (\$26,000,000) through the biennium ending August 31, 2011.

There are provisions of the bill that are anticipated to have no significant fiscal impact to the State or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

Fiscal Analysis

The bill would amend the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, Local Government Code, Penal Code, Transportation Code, Education Code, and Human Resources Code relating to criminal street gangs and certain other offenses.

The bill would increase the punishment of criminal solicitation of a minor to the same category as the solicited offense, depending on the circumstances, if certain elements of a criminal street gang are present. The offense is currently punishable as one category lower than the solicited offense. The bill would broaden the offense of coercing, soliciting, or inducing gang membership to include family members. The offense is punishable as a state jail felony or felony of the third degree depending on

the circumstances. The bill would create gang-free zones and increase punishment for offenses of engaging in organized criminal activity to the next higher category of offense if they occur in gang-free zones. The bill would allow for the use of maps as evidence of location or area for the purpose of showing the location and boundaries of gang-free zones. The bill would create the offense of directing activities of certain criminal street gangs punishable as a felony of the first degree. The bill would permit sentences for more than one offense arising out of the same criminal episode to run concurrently or consecutively if there is an affirmative finding regarding gang-related conduct unless the defendant's case was transferred to the court from the juvenile court. The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category. The fiscal impact of these provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would include graffiti, certain unlawful transfer of certain weapons offenses, and firearm smuggling to offenses punishable as engaging in organized criminal activity. The bill would create the offense of online harassment to further interest of criminal street gang punishable as a Class B misdemeanor, except the offense is a Class A misdemeanor if the actor has previously been convicted. The bill would create new civil action against criminal street gangs for a violation of injunction. The bill would make property obtained through organized crime offenses, certain unlawful transfer of certain weapons offenses, and firearm smuggling subject to forfeiture. The bill would create a finding regarding gang-related conduct to be entered in the judgment of a case if the applicable conduct was engaged in as part of the activities of a criminal street gang. The bill would add to possible conditions of community supervision relating to criminal street gangs. The bill would require juveniles who have been found to have engaged in delinquent conduct that is also gang-related conduct to participate in a criminal street gang intervention program. The bill would amend the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, and Local Government Code as they relate to graffiti, fees and court costs, and aerosol paint. The bill would create the offense of burglary of a building to create graffiti punishable as a state jail felony. The bill would amend the Penal Code relating to the prosecution and punishment for certain criminal offenses involving the use of a false or fictitious identity or identifying document. The bill would create the offense of firearm smuggling punishable as a felony of the third degree or a felony of the second degree depending on the circumstances. The bill would add to the elements that must apply when determining criminal information collected in an intelligence database used to investigate and prosecute offenses committed by criminal street gangs. The bill would also change from three to five years the length of time records may be retained before information is removed. The bill would automatically suspend or prohibit issuance of a person's driver's license upon conviction of an offense related to organized crime and make operating a motor vehicle on a highway during the period of that suspension or prohibition punishable as a Class A misdemeanor. DPS states there would be some cost associated with driver's licenses; however, it is assumed the cost could be reasonably absorbed with existing resources. The bill would amend the Code of Criminal Procedure relating to an interception order for communication by specified person. The bill would amend the Education Code and Human Resources Code to require superintendents of public school districts, administrators of private schools, governing boards of higher education institutions, and day-care centers to provide information on gang-free zones and inform of the consequences of engaging in organized criminal activity within those zones. The bill would amend the Civil Practice and Remedies Code relating to civil racketeering. The bill would provide different penalties and remedies for racketeering. The bill would abate organized enterprises engaged in a pattern or practice of racketeering involving gambling, prostitution, unlawful manufacture, transportation, repair or sale of weapons, controlled substances and dangerous drugs, indecency involving minors, human trafficking, bigamy, or fraudulent use of identifying information. Under bill provisions, the Office of the Attorney General (OAG) may bring a civil suit to abate the racketeering and may seek to recover civil penalties, including attorneys fees. The bill would also require the Legislative Budget Board (LBB) to prepare an annual criminal justice impact policy statement for this Act. These provisions of the bill are not expected to have a significant fiscal impact or could be absorbed with existing resources.

The bill would permit the use of electronic monitoring of certain members of criminal street gangs

who are placed on community supervision or released to parole or mandatory supervision. The Texas Department of Criminal Justice states the cost for active GPS monitoring services is \$9.95 per day. It is anticipated that the cost could be absorbed with existing resources.

The bill would require the Texas Fusion Center to annually submit a report regarding criminal street gangs and gang-related crime. The bill would create a "Public Corruption Unit" within the Department of Public Safety (DPS). DPS states that they are unable to determine an accurate measure of the quantity of requests for assistance for the Public Corruption Unit; therefore, they are unable to determine the subsequent fiscal impact for provisions establishing that unit.

The bill would require the Governor's Criminal Justice Division to administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities. The bill would allow the criminal justice division to use any revenue available for the purposes of the bill. Implementation of the bill would result in an estimated \$13 million a year in General Revenue to provide grants to combat gang violence.

### **Methodology**

The \$13 million for anti-gang grants is based on the amount in the Governor's Office Homeland Security plan under the Governor's Office for anti-gang activities.

### **Local Government Impact**

There are provisions of the bill that are anticipated to have no significant fiscal impact to units of local government or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would amend the Local Government Code to allow a county by order or a municipality by ordinance to require a person who sells aerosol paint to impose a surcharge not to exceed \$1 on each sale of aerosol paint. Money collected under this section may be used by local government only for purposes related to graffiti abatement.

**Source Agencies:** 301 Office of the Governor, 405 Department of Public Safety, 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, TP, KJG

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity. ), **Committee Report 2nd House, Substituted**

Depending on the use of the engaging in organized criminal activity provision for the offenses specified in the bill, there could be an indeterminate cost to the state.
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The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

The bill would take effect on September 1, 2009 and would apply to an offense committed on or after the effective date.

Expanding the list of criminal offenses punishable as engaging in organized criminal activity is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or, longer terms of confinement in county jails or prison. A check of Texas Department of Criminal Justice records, Department of Public Safety records, Office of Court Administration records, and Jail Standards Commission records did not reveal any information that would help in an accurate assumption regarding the probable use of the engaging in organized criminal activity provision for the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission; therefore, the probable impact of implementing the bill cannot be determined.

**Local Government Impact**

The probable fiscal impact on local government cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses specified in the bill.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, TMP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 15, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity.), **As Engrossed**

Depending on the use of the engaging in organized criminal activity provision for the offenses specified in the bill, there could be an indeterminate cost to the state.

The bill would amend the Penal Code to include the offenses of graffiti, escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

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**Local Government Impact**

The probable fiscal impact on local government cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses specified in the bill.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, GG, TMP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 20, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity.), **As Introduced**

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses specified in the bill.

The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

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**Local Government Impact**

The probable fiscal impact on local government cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses specified in the bill.

**Source Agencies:** 696 Department of Criminal Justice

**LBB Staff:** JOB, ESI, TMP

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity. ), **Committee Report 2nd House, Substituted**

The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

In fiscal year 2008, 330 offenders were admitted to prison and state jail for escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission. First-degree felony offenders received an average sentence length of approximately 26 years; second-degree felony offenders received an average sentence length of approximately 10 years; third-degree felony offenders received an average sentence length of approximately 5 years; and state jail felony offenders received an average sentence length of approximately 0.6 years.

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission.

**Source Agencies:**

**LBB Staff:** JOB, GG, TMP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**May 15, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity.), **As Engrossed**

The bill would amend the Penal Code to include the offenses of graffiti, escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

In fiscal year 2008, approximately 360 offenders were admitted to prison and state jail for graffiti, escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission. First-degree felony offenders received an average sentence length of approximately 26 years; second-degree felony offenders received an average sentence length of approximately 10 years; third-degree felony offenders received an average sentence length of approximately 4 years; and state jail felony offenders received an average sentence length of approximately 0.8 years.

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses of graffiti, escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission.

**Source Agencies:**

**LBB Staff:** JOB, TMP



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**March 20, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2086** by Moody (Relating to the prosecution and punishment of the offense of engaging in organized criminal activity.), **As Introduced**

The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category.

In fiscal year 2008, 330 offenders were admitted to prison and state jail for escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission. First-degree felony offenders received an average sentence length of approximately 26 years; second-degree felony offenders received an average sentence length of approximately 10 years; third-degree felony offenders received an average sentence length of approximately 5 years; and state jail felony offenders received an average sentence length of approximately 0.6 years.

The probable impact of implementing the provision of this bill cannot be determined due to the unavailability of reliable data or information related to the probable use of the engaging in organized criminal activity provision for the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission.

**Source Agencies:**

**LBB Staff:** JOB, TMP