

BILL ANALYSIS

Senate Research Center

S.B. 1695
By: Williams
Transportation & Homeland Security
3/28/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill aims to improve organized crime statutes by increasing penalties and making existing statutes more desirable to use by prosecutors. Specifically, the bill makes the following changes:

- Prohibits an inmate serving time for an organized crime or directing criminal activities offense from being eligible for parole until the inmate has served at least half of the sentence requirement or 30 years, whichever is less.
- A person convicted under this statute is required to serve a minimum of two years in prison and is prohibited from release to mandatory supervision.
- For a criminal found guilty of engaging in organized criminal activity involving the commission of a first-degree felony, his or her conviction may be used to increase the category of the offense for which the person is charged and may require a 15-year minimum sentence.
- Finally, a person will be required to serve a minimum sentence of 25 years if he or she is convicted of financing, directing, or supervising a criminal street gang by committing or conspiring to commit a felony of the first or second degree

As proposed, S.B. 1695 amends current law relating to penalties for engaging in organized criminal activity.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4(a), Article 37.07, Code of Criminal Procedure, as follows:

(a) Requires the court, in the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is an offense under Section 71.02 (Engaging in Organized Criminal Activity) or 71.023 (Directing Activities of Criminal Street Gangs), Penal Code, or an offense listed in Section 3g(a)(1) (relating to the offenses to which the provisions of Section 3 (Judge Ordered Community Supervision) of this article do not apply), Article 42.12 (Judgment and Sentence), or if the judgment contains an affirmative finding under Section 3g(a)(2) (relating to the finding of use or exhibition of a deadly weapon during the commission of a felony offense or during immediate flight therefrom), Article 42.12, unless the defendant has been convicted of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), Penal Code, an offense under Section 22.021 (Aggravated Sexual Assault), Penal Code, that is punishable under Subsection (f) (relating to the minimum term of imprisonment for aggravated sexual assault) of that section, or a capital felony, to charge the jury in writing. Sets forth the language of the charge. Makes nonsubstantive changes.

SECTION 2. Amends Section 508.145(d), Government Code, as follows:

(d) Provides that an inmate serving a sentence for an offense described by Section 3g(a)(1)(A) (relating to murder), (C) (relating to indecency with a child), (D) (relating to aggravated kidnapping), (E) (relating to aggravated sexual assault), (F) (relating to aggravated robbery), (G) (relating to increased punishment under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code), (H) (relating to sexual assault), (I) (relating to injury to a child, elderly individual, or disabled individual), (J) (relating to sexual performance by a child), or (K) (relating to first-degree felony criminal solicitation), Article 42.12, Code of Criminal Procedure, an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, or an offense under Section 71.02 or 71.023, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years. Makes a nonsubstantive change.

SECTION 3. Amends Section 508.149(a), Government Code, to prohibit an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of certain offenses, including a first degree felony under Section 71.02 or 71.023, Penal Code.

SECTION 4. Amends Section 481.108, Health and Safety Code, as follows:

Sec. 481.108. PREPARATORY OFFENSES. (a) Provides that, except as provided by Subsection (b), Title 4 (Inchoate Offenses), Penal Code, applies to an offense under this chapter.

(b) Provides that the performance of an overt act described by Section 15.02(a)(2) (relating to the performance of an overt act in pursuance of the agreement), Penal Code, that is otherwise required to establish criminal conspiracy under that section is not required for purposes of establishing criminal conspiracy with respect to an offense under this chapter.

SECTION 5. Reenacts Section 71.02(b), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, and amends it as follows:

(b) Provides that, except as provided in Subsections (c) and (d) (relating to raising at the punishment stage of a trial the issue of voluntary and complete renunciation of the offense), an offense under this section is one category higher than the most serious offense listed in Subsection (a) (relating to engaging in organized criminal activity) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 15 years.

SECTION 6. Reenacts Section 71.02(c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, to provide that conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION 7. Amends Section 71.023, Penal Code, as follows:

Sec. 71.023. New heading: DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS. (a) Provides that a person commits an offense if the person knowingly finances, directs, or supervises members of a criminal street gang that commit or conspire to commit a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(2) for which it is shown that a deadly weapon, as defined by Section 1.07 (Definitions), Penal Code, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3) that is punishable as a felony of the first or second degree under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code.

Deletes existing text providing that a person commits an offense if the person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the interests of the criminal street gang or to increase the person's standing, position, or status in the criminal street gang.

(b) Provides that an offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Deletes existing Subsection (c) defining "criminal street gang" in this section.

SECTION 8. Makes application of Subsection (a), Section 4, Article 37.07, Code of Criminal Procedure; Sections 508.145 and 508.149, Government Code; Section 481.108, Health and Safety Code; and Sections 71.02 and 71.023, Penal Code, as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2011.