

By: Williams

S.B. No. 1695

A BILL TO BE ENTITLED

AN ACT

relating to penalties for engaging in organized criminal activity.

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

SECTION 1. Subsection (a), Section 4, Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) 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 or 71.023, Penal Code, or an offense listed in Section 3g(a)(1), Article 42.12, [~~of this code~~] or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, [~~of this code,~~] unless the defendant has been convicted of an offense under Section 21.02, Penal Code, an offense under Section 22.021, Penal Code, that is punishable under Subsection (f) of that section, or a capital felony, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

1 "It is also possible that the length of time for which the  
2 defendant will be imprisoned might be reduced by the award of  
3 parole.

4 "Under the law applicable in this case, if the defendant is  
5 sentenced to a term of imprisonment, the defendant [~~he~~] will not  
6 become eligible for parole until the actual time served equals  
7 one-half of the sentence imposed or 30 years, whichever is less,  
8 without consideration of any good conduct time the defendant [~~he~~]  
9 may earn. If the defendant is sentenced to a term of less than four  
10 years, the defendant [~~he~~] must serve at least two years before the  
11 defendant [~~he~~] is eligible for parole. Eligibility for parole does  
12 not guarantee that parole will be granted.

13 "It cannot accurately be predicted how the parole law and  
14 good conduct time might be applied to this defendant if [~~he is~~]  
15 sentenced to a term of imprisonment, because the application of  
16 these laws will depend on decisions made by prison and parole  
17 authorities.

18 "You may consider the existence of the parole law and good  
19 conduct time. However, you are not to consider the extent to which  
20 good conduct time may be awarded to or forfeited by this particular  
21 defendant. You are not to consider the manner in which the parole  
22 law may be applied to this particular defendant."

23 SECTION 2. Subsection (d), Section 508.145, Government  
24 Code, is amended to read as follows:

25 (d) An inmate serving a sentence for an offense described by  
26 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K),  
27 Article 42.12, Code of Criminal Procedure, [~~or for~~] an offense for

1 which the judgment contains an affirmative finding under Section  
2 3g(a)(2) of that article, or an offense under Section 71.02 or  
3 71.023, Penal Code, is not eligible for release on parole until the  
4 inmate's actual calendar time served, without consideration of good  
5 conduct time, equals one-half of the sentence or 30 calendar years,  
6 whichever is less, but in no event is the inmate eligible for  
7 release on parole in less than two calendar years.

8 SECTION 3. Subsection (a), Section 508.149, Government  
9 Code, is amended to read as follows:

10 (a) An inmate may not be released to mandatory supervision  
11 if the inmate is serving a sentence for or has been previously  
12 convicted of:

13 (1) an offense for which the judgment contains an  
14 affirmative finding under Section 3g(a)(2), Article 42.12, Code of  
15 Criminal Procedure;

16 (2) a first degree felony or a second degree felony  
17 under Section 19.02, Penal Code;

18 (3) a capital felony under Section 19.03, Penal Code;

19 (4) a first degree felony or a second degree felony  
20 under Section 20.04, Penal Code;

21 (5) an offense under Section 21.11, Penal Code;

22 (6) a felony under Section 22.011, Penal Code;

23 (7) a first degree felony or a second degree felony  
24 under Section 22.02, Penal Code;

25 (8) a first degree felony under Section 22.021, Penal  
26 Code;

27 (9) a first degree felony under Section 22.04, Penal

- 1 Code;
- 2 (10) a first degree felony under Section 28.02, Penal
- 3 Code;
- 4 (11) a second degree felony under Section 29.02, Penal
- 5 Code;
- 6 (12) a first degree felony under Section 29.03, Penal
- 7 Code;
- 8 (13) a first degree felony under Section 30.02, Penal
- 9 Code;
- 10 (14) a felony for which the punishment is increased
- 11 under Section 481.134 or Section 481.140, Health and Safety Code;
- 12 (15) an offense under Section 43.25, Penal Code;
- 13 (16) an offense under Section 21.02, Penal Code; ~~[or]~~
- 14 (17) a first degree felony under Section 15.03, Penal
- 15 Code; or
- 16 (18) a first degree felony under Section 71.02 or
- 17 71.023, Penal Code.

18 SECTION 4. Section 481.108, Health and Safety Code, is

19 amended to read as follows:

20 Sec. 481.108. PREPARATORY OFFENSES. (a) Except as

21 provided by Subsection (b), Title 4, Penal Code, applies to an

22 offense under this chapter.

23 (b) The performance of an overt act described by Section

24 15.02(a)(2), Penal Code, that is otherwise required to establish

25 criminal conspiracy under that section is not required for purposes

26 of establishing criminal conspiracy with respect to an offense

27 under this chapter.

1 SECTION 5. Subsection (b), Section 71.02, Penal Code, as  
2 amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the  
3 73rd Legislature, Regular Session, 1993, is reenacted and amended  
4 to read as follows:

5 (b) Except as provided in Subsections (c) and (d), an  
6 offense under this section is one category higher than the most  
7 serious offense listed in Subsection (a) that was committed, and if  
8 the most serious offense is a Class A misdemeanor, the offense is a  
9 state jail felony, except that if the most serious offense is a  
10 felony of the first degree, the offense is a felony of the first  
11 degree punishable by imprisonment in the Texas Department of  
12 Criminal Justice for life or for any term of not more than 99 years  
13 or less than 15 years.

14 SECTION 6. Subsection (c), Section 71.02, Penal Code, as  
15 amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the  
16 73rd Legislature, Regular Session, 1993, is reenacted to read as  
17 follows:

18 (c) Conspiring to commit an offense under this section is of  
19 the same degree as the most serious offense listed in Subsection (a)  
20 that the person conspired to commit.

21 SECTION 7. Section 71.023, Penal Code, is amended to read as  
22 follows:

23 Sec. 71.023. DIRECTING ACTIVITIES OF [~~CERTAIN~~] CRIMINAL  
24 STREET GANGS. (a) A person commits an offense if the person  
25 knowingly [~~initiates, organizes, plans,~~] finances, directs,  
26 [~~manages,~~] or supervises [~~a criminal street gang or~~] members of a  
27 criminal street gang that commit or conspire to commit a felony:

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

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

7           (3) that is punishable as a felony of the first or  
8 second degree under Chapter 481, Health and Safety Code [~~with the~~  
9 ~~intent to benefit, promote, or further the interests of the~~  
10 ~~criminal street gang or to increase the person's standing,~~  
11 ~~position, or status in the criminal street gang~~].

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

16           ~~[(c) Notwithstanding Section 71.01, in this section,~~  
17 ~~"criminal street gang" means:~~

18                   ~~[(1) an organization that:~~

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

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

25                           ~~[(C) engages in profit-sharing among two or more~~  
26 ~~members of the organization; and~~

27                           ~~[(D) in one or more regions of this state served~~

1 ~~by different regional councils of government, continuously or~~  
2 ~~regularly engages in conduct:~~

3 ~~[(i) that constitutes an offense listed in~~  
4 ~~Section 3g(a)(1), Article 42.12, Code of Criminal Procedure,~~

5 ~~[(ii) in which it is alleged that a deadly~~  
6 ~~weapon is used or exhibited during the commission of or immediate~~  
7 ~~flight from the commission of any felony offense, or~~

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

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

14 SECTION 8. Subsection (a), Section 4, Article 37.07, Code  
15 of Criminal Procedure, Sections 508.145 and 508.149, Government  
16 Code, Section 481.108, Health and Safety Code, and Sections 71.02  
17 and 71.023, Penal Code, as amended by this Act, apply only to an  
18 offense committed on or after the effective date of this Act. An  
19 offense committed before the effective date of this Act is governed  
20 by the law in effect when the offense was committed, and the former  
21 law is continued in effect for that purpose. For purposes of this  
22 section, an offense was committed before the effective date of this  
23 Act if any element of the offense occurred before that date.

24 SECTION 9. This Act takes effect September 1, 2011.