

1-1 By: Williams S.B. No. 1695
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; May 2, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 2, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1695 By: Williams

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

1-10 relating to penalties for engaging in organized criminal activity.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subsection (a), Section 4, Article 37.07, Code
1-13 of Criminal Procedure, is amended to read as follows:
1-14 (a) In the penalty phase of the trial of a felony case in
1-15 which the punishment is to be assessed by the jury rather than the
1-16 court, if the offense of which the jury has found the defendant
1-17 guilty is an offense under Section 71.02 or 71.023, Penal Code, or
1-18 an offense listed in Section 3g(a)(1), Article 42.12, [~~of this~~
1-19 code] or if the judgment contains an affirmative finding under
1-20 Section 3g(a)(2), Article 42.12, [~~of this code,~~] unless the
1-21 defendant has been convicted of an offense under Section 21.02,
1-22 Penal Code, an offense under Section 22.021, Penal Code, that is
1-23 punishable under Subsection (f) of that section, or a capital
1-24 felony, the court shall charge the jury in writing as follows:
1-25 "Under the law applicable in this case, the defendant, if
1-26 sentenced to a term of imprisonment, may earn time off the period of
1-27 incarceration imposed through the award of good conduct time.
1-28 Prison authorities may award good conduct time to a prisoner who
1-29 exhibits good behavior, diligence in carrying out prison work
1-30 assignments, and attempts at rehabilitation. If a prisoner engages
1-31 in misconduct, prison authorities may also take away all or part of
1-32 any good conduct time earned by the prisoner.
1-33 "It is also possible that the length of time for which the
1-34 defendant will be imprisoned might be reduced by the award of
1-35 parole.
1-36 "Under the law applicable in this case, if the defendant is
1-37 sentenced to a term of imprisonment, the defendant [~~he~~] will not
1-38 become eligible for parole until the actual time served equals
1-39 one-half of the sentence imposed or 30 years, whichever is less,
1-40 without consideration of any good conduct time the defendant [~~he~~]
1-41 may earn. If the defendant is sentenced to a term of less than four
1-42 years, the defendant [~~he~~] must serve at least two years before the
1-43 defendant [~~he~~] is eligible for parole. Eligibility for parole does
1-44 not guarantee that parole will be granted.
1-45 "It cannot accurately be predicted how the parole law and
1-46 good conduct time might be applied to this defendant if [~~he is~~]
1-47 sentenced to a term of imprisonment, because the application of
1-48 these laws will depend on decisions made by prison and parole
1-49 authorities.
1-50 "You may consider the existence of the parole law and good
1-51 conduct time. However, you are not to consider the extent to which
1-52 good conduct time may be awarded to or forfeited by this particular
1-53 defendant. You are not to consider the manner in which the parole
1-54 law may be applied to this particular defendant."
1-55 SECTION 2. Subsection (d), Section 508.145, Government
1-56 Code, is amended to read as follows:
1-57 (d) An inmate serving a sentence for an offense described by
1-58 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K),
1-59 Article 42.12, Code of Criminal Procedure, [~~or for~~] an offense for
1-60 which the judgment contains an affirmative finding under Section
1-61 3g(a)(2) of that article, or an offense under Section 71.02 or
1-62 71.023, Penal Code, is not eligible for release on parole until the
1-63 inmate's actual calendar time served, without consideration of good

2-1 conduct time, equals one-half of the sentence or 30 calendar years,
2-2 whichever is less, but in no event is the inmate eligible for
2-3 release on parole in less than two calendar years.

2-4 SECTION 3. Subsection (a), Section 508.149, Government
2-5 Code, is amended to read as follows:

2-6 (a) An inmate may not be released to mandatory supervision
2-7 if the inmate is serving a sentence for or has been previously
2-8 convicted of:

2-9 (1) an offense for which the judgment contains an
2-10 affirmative finding under Section 3g(a)(2), Article 42.12, Code of
2-11 Criminal Procedure;

2-12 (2) a first degree felony or a second degree felony
2-13 under Section 19.02, Penal Code;

2-14 (3) a capital felony under Section 19.03, Penal Code;

2-15 (4) a first degree felony or a second degree felony
2-16 under Section 20.04, Penal Code;

2-17 (5) an offense under Section 21.11, Penal Code;

2-18 (6) a felony under Section 22.011, Penal Code;

2-19 (7) a first degree felony or a second degree felony
2-20 under Section 22.02, Penal Code;

2-21 (8) a first degree felony under Section 22.021, Penal
2-22 Code;

2-23 (9) a first degree felony under Section 22.04, Penal
2-24 Code;

2-25 (10) a first degree felony under Section 28.02, Penal
2-26 Code;

2-27 (11) a second degree felony under Section 29.02, Penal
2-28 Code;

2-29 (12) a first degree felony under Section 29.03, Penal
2-30 Code;

2-31 (13) a first degree felony under Section 30.02, Penal
2-32 Code;

2-33 (14) a felony for which the punishment is increased
2-34 under Section 481.134 or Section 481.140, Health and Safety Code;

2-35 (15) an offense under Section 43.25, Penal Code;

2-36 (16) an offense under Section 21.02, Penal Code; ~~or~~

2-37 (17) a first degree felony under Section 15.03, Penal
2-38 Code; or

2-39 (18) a first degree felony under Section 71.02 or
2-40 71.023, Penal Code.

2-41 SECTION 4. Subsection (b), Section 71.02, Penal Code, as
2-42 amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the
2-43 73rd Legislature, Regular Session, 1993, is reenacted and amended
2-44 to read as follows:

2-45 (b) Except as provided in Subsections (c) and (d), an
2-46 offense under this section is one category higher than the most
2-47 serious offense listed in Subsection (a) that was committed, and if
2-48 the most serious offense is a Class A misdemeanor, the offense is a
2-49 state jail felony, except that if the most serious offense is a
2-50 felony of the first degree, the offense is a felony of the first
2-51 degree punishable by imprisonment in the Texas Department of
2-52 Criminal Justice for life or for any term of not more than 99 years
2-53 or less than 15 years.

2-54 SECTION 5. Subsection (c), Section 71.02, Penal Code, as
2-55 amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the
2-56 73rd Legislature, Regular Session, 1993, is reenacted to read as
2-57 follows:

2-58 (c) Conspiring to commit an offense under this section is of
2-59 the same degree as the most serious offense listed in Subsection (a)
2-60 that the person conspired to commit.

2-61 SECTION 6. Section 71.023, Penal Code, is amended to read as
2-62 follows:

2-63 Sec. 71.023. DIRECTING ACTIVITIES OF [~~CERTAIN~~] CRIMINAL
2-64 STREET GANGS. (a) A person commits an offense if the person
2-65 knowingly [~~initiates, organizes, plans,~~] finances, directs,
2-66 [~~manages,~~] or supervises [~~a criminal street gang or~~] members of a
2-67 criminal street gang that commit or conspire to commit a felony:

2-68 (1) that is listed in Section 3g(a)(1), Article 42.12,
2-69 Code of Criminal Procedure;

3-1 (2) for which it is shown that a deadly weapon, as
3-2 defined by Section 1.07, Penal Code, was used or exhibited during
3-3 the commission of the offense or during immediate flight from the
3-4 commission of the offense; or

3-5 (3) that is punishable as a felony of the first or
3-6 second degree under Chapter 481, Health and Safety Code [~~with the~~
3-7 ~~intent to benefit, promote, or further the interests of the~~
3-8 ~~criminal street gang or to increase the person's standing,~~
3-9 ~~position, or status in the criminal street gang].~~

3-10 (b) An offense under this section is a felony of the first
3-11 degree punishable by imprisonment in the Texas Department of
3-12 Criminal Justice for life or for any term of not more than 99 years
3-13 or less than 25 years.

3-14 [~~(c) Notwithstanding Section 71.01, in this section,~~
3-15 ~~"criminal street gang" means:~~

3-16 [~~(1) an organization that:~~
3-17 [~~(A) has more than 10 members whose names are~~
3-18 ~~included in an intelligence database under Chapter 61, Code of~~
3-19 ~~Criminal Procedure;~~

3-20 [~~(B) has a hierarchical structure that has been~~
3-21 ~~documented in an intelligence database under Chapter 61, Code of~~
3-22 ~~Criminal Procedure;~~

3-23 [~~(C) engages in profit-sharing among two or more~~
3-24 ~~members of the organization; and~~

3-25 [~~(D) in one or more regions of this state served~~
3-26 ~~by different regional councils of government, continuously or~~
3-27 ~~regularly engages in conduct:~~

3-28 [~~(i) that constitutes an offense listed in~~
3-29 ~~Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;~~

3-30 [~~(ii) in which it is alleged that a deadly~~
3-31 ~~weapon is used or exhibited during the commission of or immediate~~
3-32 ~~flight from the commission of any felony offense; or~~

3-33 [~~(iii) that is punishable as a felony of the~~
3-34 ~~first or second degree under Chapter 481, Health and Safety Code; or~~

3-35 [~~(2) an organization that, in collaboration with an~~
3-36 ~~organization described by Subdivision (1), engages in conduct or~~
3-37 ~~commits an offense or conspires to engage in conduct or commit an~~
3-38 ~~offense described by Subdivision (1)(D).]~~

3-39 SECTION 7. The changes in law made by this Act apply only to
3-40 an offense committed on or after the effective date of this Act. An
3-41 offense committed before the effective date of this Act is governed
3-42 by the law in effect when the offense was committed, and the former
3-43 law is continued in effect for that purpose. For purposes of this
3-44 section, an offense was committed before the effective date of this
3-45 Act if any element of the offense occurred before that date.

3-46 SECTION 8. This Act takes effect September 1, 2011.

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