

BILL ANALYSIS

C.S.H.B. 2842
By: Wu
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law relating to engaging in organized criminal activity and directing activities of certain criminal street gangs further criminalizes various acts that are already established as criminal offenses under other laws when those acts are committed as a part of organized criminal activity. Some of those underlying offenses render a defendant subject to delayed parole eligibility or ineligibility for release to mandatory supervision, but the same restrictions do not currently apply to those offenses when committed as part of organized criminal activity. As a result, a member or director of a criminal street gang may become eligible for release from prison earlier than a person who commits a similar act independent of any organized criminal activity. C.S.H.B. 2842 seeks to address this discrepancy.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2842 amends the Code of Criminal Procedure to include among the defendants ineligible for judge ordered community supervision a defendant adjudged guilty of directing activities of certain criminal street gangs or of engaging in organized criminal activity if that offense is punishable as a first degree felony or the predicate offense committed or conspired to be committed is an offense that renders a defendant ineligible for judge ordered community supervision.

C.S.H.B. 2842 amends the Government Code to make an inmate serving a sentence for such an offense of engaging in organized criminal activity or an offense of directing activities of certain criminal street gangs ineligible 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 in less than two calendar years.

C.S.H.B. 2842 reenacts and amends Section 508.149(a), Government Code, as amended by Chapters 1 (S.B. 24) and 122 (H.B. 3000), Acts of the 82nd Legislature, Regular Session, 2011, to prohibit the release to mandatory supervision of an inmate who is serving a sentence for or has been previously convicted of first degree felony engaging in organized criminal activity or first degree felony directing activities of certain criminal street gangs.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2842 may differ from the original in minor or nonsubstantive ways, the

following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 4(a), 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.

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

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

"It cannot accurately be predicted how the parole law and good conduct time might be

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

applied to this defendant if [~~he is~~] sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

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

No equivalent provision.

SECTION 1. Section 3g(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense under:

(A) Section 19.02, Penal Code (Murder);

(B) Section 19.03, Penal Code (Capital murder);

(C) Section 21.11(a)(1), Penal Code (Indecency with a child);

(D) Section 20.04, Penal Code (Aggravated kidnapping);

(E) Section 22.021, Penal Code (Aggravated sexual assault);

(F) Section 29.03, Penal Code (Aggravated robbery);

(G) Chapter 481, Health and Safety Code, for which punishment is increased under:

(i) Section 481.140, Health and Safety Code; or

(ii) Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections;

(H) Section 22.011, Penal Code (Sexual assault);

(I) Section 22.04(a)(1), Penal Code (Injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony of the first degree and the victim of the offense is a child;

(J) Section 43.25, Penal Code (Sexual performance by a child);

(K) Section 15.03, Penal Code, if the offense is punishable as a felony of the first degree;

(L) Section 43.05, Penal Code (Compelling

prostitution); [Ø]

(M) Section 20A.02, Penal Code (Trafficking of persons); [Ø]

(N) Section 71.02, Penal Code (Engaging in organized criminal activity), if:

(i) the offense is punishable as a felony of the first degree; or

(ii) the predicate offense committed or conspired to be committed is listed in this subsection; or

(O) Section 71.023, Penal Code (Directing activities of certain criminal street gangs); or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07, Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.

SECTION 2. Section 508.145(d)(1), Government Code, is amended to read as follows:

(1) An inmate serving a sentence for an offense described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K), Article 42.12, Code of Criminal Procedure, [Ø] an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, [Ø] an offense under Section 20A.03, Penal Code, 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.

SECTION 3. Section 508.149(a), Government Code, as amended by Chapters 1 (S.B. 24) and 122 (H.B. 3000), Acts of the 82nd Legislature, Regular Session, 2011, is

SECTION 2. Section 508.145(d)(1), Government Code, is amended to read as follows:

(1) An inmate serving a sentence for an offense described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), [Ø] (K), (N), or (O), Article 42.12, Code of Criminal Procedure, [Ø] for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, or for an offense under Section 20A.03, 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.

SECTION 3. Same as introduced version.

reenacted and amended.

SECTION 4. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.

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