

BILL ANALYSIS

Senate Research Center

S.B. 549
By: Williams; Estes
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 549 improves organized crime statutes by increasing penalties and making existing statutes more desirable to use by prosecutors. Inmates convicted under this section of statute will have more stringent parole eligibility requirements and serve longer minimum sentences. This legislation is specifically designed to address criminal gang leadership that directs felony gang activity but often avoids strict penalty by blaming the actions on other gang members.

S.B. 549 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), Penal Code, other than an offense punishable as a state felony under that section, an offense under Section 71.023 (Directing Activities of Certain Criminal Street Gangs), Penal Code, or an offense listed in Section 3g(a)(1) (relating to a defendant adjudged guilty of an offense of a certain crime), Article 42.12, or if the judgment contains an affirmative finding under Section 3g(a)(2) (relating to a defendant's use of a deadly weapon), 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 an offense) of that section, or a capital felony, to charge the jury in writing in certain language. Makes nonsubstantive changes.

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

(d)(1) Prohibits an inmate serving a sentence for an offense described by Section 3g(a)(1)(A) (relating to Section 19.02 (Murder), Penal Code), (C) (relating to Section 21.11(a)(1) (Indecency with a Child), Penal Code), (D) (relating to Section 20.04 (Aggravated Kidnapping), Penal Code), (E) (relating to Section 22.021 (Aggravated Sexual Assault), Penal Code), (F) (relating to Section 29.03 (Aggravated Robbery), Penal Code), (G) (relating to Chapter 481, Health and Safety Code, for which punishment can be increased), (H) (relating to Section 22.011 (Sexual Assault), Penal Code), (I) (relating to Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual)), (J) (relating to Section 43.25 (Sexual Performance By a Child), Penal Code), or (K) (relating to Section 15.03 (Compelling Prostitution), Penal Code), 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, an offense under Section 20A.03 (Continuous Trafficking of Persons), Penal Code, or an offense under Section 71.02 or

71.023, Penal Code, from being 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 nonsubstantive changes.

(2) Makes no change to this subdivision.

SECTION 3. Reenacts 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, and amends it to prohibit an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of an offense under Section 20A.03, Penal Code or a first degree felony under Section 71.02 or 71.023, Penal Code.

SECTION 4. (a) Requires that this section be known as Chelsea's Law.

(b) Amends Section 71.02(b), Penal Code, as follows:

(b) Provides that, except as provided in Subsections (c) (relating to conspiring to commit an offense) and (d) (relating to a defendant attempting to prevent an offense), an offense under this section is one category higher than the most serious offense listed in Subsection (a) (relating to an offense committed while a member of a street gang) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree, rather than 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 (TDCJ) for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A) (relating to providing that a person commits an offense if the person fulfills certain criteria); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; or

(2) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1).

SECTION 5. 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, as part of the identifiable leadership of a criminal street gang, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit a felony offense that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, a felony offense for which it is shown that a deadly weapon, as defined by Section 1.07 (Definitions), was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense, or an offense that is punishable under Section 481.112(e) (relating to providing that a certain offense is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000 for a certain amount of a controlled substance), 481.112(f) (relating to providing that a certain offense is punishable by imprisonment in TDCJ for life or for a

term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000 for a certain amount of a controlled substance), 481.1121(b)(4) (relating to providing that an offense under this section is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000 for a certain amount of a controlled substance), 481.115(f) (relating to providing that a certain offense is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000 for a certain amount of a controlled substance), or 481.120(b)(6) (relating to providing that a certain offense is punishable by imprisonment in TDCJ for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000 for a certain amount of marihuana), 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 TDCJ for life or for any term of not more than 99 years or less than 25 years.

(c) Deletes existing text defining "criminal street gang."

SECTION 6. Makes application of this Act prospective.

SECTION 7. Provides that, to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 8. Effective date: September 1, 2013.