

Amend SB 1649 (house committee report) as follows:

(1) On page 1, line 10, strike "Subsection (d-1)" and substitute "Subsections (d-1) and (d-2)".

(2) On page 2, between lines 21 and 22, insert the following:

(d-2) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(B), the defendant may raise the issue as to whether, at the time of the instant offense or the previous offense, the defendant was engaging in speech or expressive conduct protected by the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(B) does not apply.