

BILL ANALYSIS

C.S.H.B. 4014
By: Murr
Community Safety, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Gang violence involving the use of firearms has been on the rise in urban and even some suburban areas of Texas in recent years. Violent gang members with firearms are undoubtedly having an adverse impact on public safety, people's livelihoods in affected areas, and even on local economies. Developing a clear statutory solution that would prohibit gang members from carrying or being in possession of handguns while engaging in certain criminal activity is an important step in tackling this growing problem. Accordingly, C.S.H.B. 4014 seeks to establish the third degree felony offense of prohibited carrying of a firearm by a gang member and makes a person arrested for this offense ineligible for release on personal bond, a person adjudged guilty for this offense ineligible for judge-ordered community supervision, and a person charged with this offense ineligible for deferred adjudication community supervision.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 4014 repeals the Penal Code's Class A misdemeanor offense of unlawful possession of a firearm involving a member of a criminal street gang who intentionally, knowingly, or recklessly carries on or about their person a handgun in a motor vehicle or watercraft. The bill amends the Penal Code to replace that offense with the third degree felony offense of prohibited carrying of a firearm by a gang member for a person who is a member of a criminal street gang and who, as follows:

- intentionally, knowingly, or recklessly carries a firearm on or about their person; and
- is engaged in conduct constituting an offense that is a Class B misdemeanor or any higher category of offense:
 - included among the list of offenses for which a defendant is not eligible for judge-ordered community supervision;
 - classified as engaging in organized criminal activity;
 - classified as an offense against the person or the family;
 - under the Texas Controlled Substances Act; or
 - during the commission of which or during the immediate flight from the commission of which the firearm or other deadly weapon was used or exhibited.

C.S.H.B. 4014 establishes as an affirmative defense to prosecution for the prohibited carrying of a firearm by a gang member that the person is not a member of a criminal street gang and the inclusion of the person's information in an intelligence database pertaining to combinations and criminal street gangs was in error or that the person's information did not meet the submission criteria for the inclusion of the person's information in such an intelligence database. The bill establishes that an actor may be prosecuted only for the offense of prohibited carrying of a firearm by a gang member if conduct constituting the offense also constitutes an unlawful carrying of a weapon offense. The bill establishes that, with respect to the justifiable use of force against another for purposes of self-defense, the use of force against another is not justified if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was carrying a firearm in a manner that constitutes the prohibited carrying of a firearm by a gang member.

C.S.H.B. 4014 amends the Code of Criminal Procedure to make a person arrested for the prohibited carrying of a firearm by a gang member ineligible for release on personal bond, a person adjudged guilty for the offense ineligible for judge-ordered community supervision, and a person charged with the offense ineligible for deferred adjudication community supervision.

C.S.H.B. 4014 amends the Civil Practice and Remedies Code to expand the conduct that constitutes the offense of maintaining a common nuisance to include maintaining a place to which persons habitually go and commit the offense of unlawful carrying of a firearm by a gang member and knowingly tolerating the activity and furthermore failing to make reasonable attempts to abate the activity.

C.S.H.B. 4014 applies only to an offense committed on or after the bill's effective date and the bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date. However, provisions relating to eligibility for release on personal bond apply only to a person arrested on or after the bill's effective date.

C.S.H.B. 4014 repeals Section 46.04 (a-1), Penal Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4014 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced replaced the repealed offense with a third degree felony offense for a criminal street gang member who carries on or about their person a handgun, including carrying a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control, while engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating, while not on their own property or property under their control or on private property with the consent of the property owner. The substitute replaces the repealed offense instead with a third degree felony offense for a person who is a member of a criminal street gang and who intentionally, knowingly, or recklessly carries on or about their person a firearm and is engaged in conduct constituting any of a list of certain specified offenses that are a Class B misdemeanor or a higher category of offense.

Whereas the introduced required that an actor whose conduct constitutes both the new offense and an unlawful carrying of weapons offense involving the actor intentionally, knowingly, or recklessly carrying on or about their person a handgun in a motor vehicle or watercraft that is

owned by the person or under their control at any time in which the person is engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating, be prosecuted only for the new offense, the substitute instead requires that an actor whose conduct constitutes both the new offense and any unlawful carrying of weapons offense be prosecuted only for the new offense.

The substitute includes the following provisions, which were not in the introduced:

- a provision establishing an affirmative defense to prosecution for the new offense;
- a provision expanding the conduct that constitutes maintaining a common nuisance; and
- provisions relating to when the use of force against another is not justified for self-defense purposes.