

BILL ANALYSIS

Senate Research Center
88R22632 AJZ-F

C.S.S.B. 1970
By: Bettencourt
Criminal Justice
4/12/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Before the passage of H.B. 2315 and S.B. 1495 in 2021, officers had been using the Deadly Conduct statute to seize cars engaged in street takeovers when appropriate. However, in the 87th legislative session, a new, more specific, offense of "Reckless Driving Exhibition" in Penal Code 42.03(f) was created. The legal concept of "in pari materia" requires that a violator must be charged with the most specific charge available unless language exists in that law that would allow officers to charge from any applicable law. Because of the new, more specific, offense of "Reckless Driving Exhibition" contained in Penal Code 42.03(f), police cannot use the charge of Deadly Conduct as the basis of an asset forfeiture seizure in some circumstances.

The issue is that the new reckless driving exhibition offense is not an enumerated offense under Engaging in Organized Criminal Activity (Penal Code, Chapter 71), so it cannot be elevated into Chapter 59 using Chapter 71 as a legal basis for seizing the vehicle used in the conduct. Organized street racing and street takeovers continued to plague Houston.

S.B. 1970 addresses these concerns by creating a new section of code under the obstructing a highway or other passageway statute that will allow for vehicles and other contraband being used during street takeovers to be seized by law enforcement. Lastly, it adds the reckless driving exhibition statutes from Penal Code 42.03 to the engaging in organized criminal activity statute. These changes will give law enforcement and prosecutors another tool to go after organized street racing and street takeovers in Texas.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1970 amends current law relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition or racing on a highway.

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 Article 59.01(2), Code of Criminal Procedure, as follows:

(2) Defines "contraband" as property of any nature, including real, personal, tangible, or intangible that is:

(A) makes no changes to this paragraph;

(B) used or intended to be used in the commission of:

(i)-(xii) makes no changes to these subparagraphs;

(xiii) makes a nonsubstantive change to this subparagraph;

(xiv) any offense under Section 545.420 (Racing on Highway), Transportation Code, rather than a Class A misdemeanor or any felony under Section 545.420, Transportation Code, other than a Class A misdemeanor that is classified as a Class A misdemeanor based solely on conduct constituting a violation of Subsection (e)(2)(B) (relating to providing that an offense is a Class A Misdemeanor if it is shown on the trial of the offense that the person was in possession of an open container) of that section; or

(xv) any offense punishable under Section 42.03(d) (relating to providing that an offense is a Class A misdemeanor if it is shown on the trial of the offense that, at the time of the offense, the person was operating a motor vehicle while engaging in a reckless driving exhibition) or (e) (relating to providing that an offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has previously been convicted one time of an offense or the person at the time of the offense was operating the vehicle while intoxicated or was in possession of an open container), Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), (xii), (xiv), or (xv) of this subdivision, or a crime of violence;

(D) makes a conforming change to this paragraph; or

(E)-(F) makes no changes to these paragraphs.

Makes nonsubstantive changes.

SECTION 2. Amends Section 42.03, Penal Code by adding Subsection (g), to authorize the actor to be prosecuted under this section or the other law, but not both if conduct that constitutes an offense under this section also constitutes an offense under any other law.

SECTION 3. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1)-(18) makes no changes to these subdivisions;

(19) any offense punishable under Section 42.03(d) or (e);

(20) any offense under Section 545.420, Transportation Code; or

(21) redesignates existing Paragraph (19) as Paragraph (21).

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2023.