88R2942 JSC-D

By:  Davis H.B. No. 2599

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the possession of a firearm by a person in a criminal street gang; creating a criminal offense; increasing criminal penalties; changing eligibility for community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 46.04, Penal Code, is amended by amending Subsections (a-1) and (e) and adding Subsection (a-2) to read as follows:

(a-1)  A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person possesses a firearm [~~intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft~~].

(a-2)  It is an affirmative defense to prosecution under Subsection (a-1) that:

(1)  the person's information is not included in the intelligence database under Chapter 67, Code of Criminal Procedure; or

(2)  the person's information is included in the intelligence database under Chapter 67, Code of Criminal Procedure, and a district court made a finding under Article 67.203(c) of that code that:

(A)  reasonable suspicion does not exist to believe that the information is accurate; or

(B)  inclusion of the information in the database does not comply with the submission criteria under Article 67.054(b), Code of Criminal Procedure.

(e)  An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (a-1) is a felony of the second degree. An offense under Subsection [~~(a-1),~~] (b)[~~,~~] or (c) is a Class A misdemeanor.

SECTION 2.  Section 71.02(a), Penal Code, is amended to read as follows:

(a)  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)  murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2)  any gambling offense punishable as a Class A misdemeanor;

(3)  promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4)  unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5)  unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a)  causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6)  any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7)  any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8)  any felony offense under Chapter 32;

(9)  any offense under Chapter 36;

(10)  any offense under Chapter 34, 35, or 35A;

(11)  any offense under Section 37.11(a);

(12)  any offense under Chapter 20A;

(13)  any offense under Section 37.10;

(14)  any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15)  any offense under Section 42.10;

(16)  any offense under Section 46.04(a-1), 46.06(a)(1), or 46.14;

(17)  any offense under Section 20.05 or 20.06;

(18)  any offense under Section 16.02; or

(19)  any offense classified as a felony under the Tax Code.

SECTION 3.  Article 42A.054(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Article 42A.053 does not apply to a defendant adjudged guilty of an offense under:

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

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

(3)  Section 19.03, Penal Code (Capital Murder);

(4)  Section 20.04, Penal Code (Aggravated Kidnapping);

(5)  Section 20A.02, Penal Code (Trafficking of Persons);

(6)  Section 20A.03, Penal Code (Continuous Trafficking of Persons);

(7)  Section 21.11, Penal Code (Indecency with a Child);

(8)  Section 22.011, Penal Code (Sexual Assault);

(9)  Section 22.021, Penal Code (Aggravated Sexual Assault);

(10)  Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A)  the offense is punishable as a felony of the first degree; and

(B)  the victim of the offense is a child;

(11)  Section 29.03, Penal Code (Aggravated Robbery);

(12)  Section 30.02, Penal Code (Burglary), if:

(A)  the offense is punishable under Subsection (d) of that section; and

(B)  the actor committed the offense with the intent to commit a felony under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(13)  Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

(14)  Section 43.05, Penal Code (Compelling Prostitution);

(15)  Section 43.25, Penal Code (Sexual Performance by a Child);

(15-a)  Section 46.04(a-1), Penal Code;

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

(A)  Section 481.140 of that code (Use of Child in Commission of Offense); or

(B)  Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections; or

(17)  Section 481.1123, Health and Safety Code (Manufacture or Delivery of Substance in Penalty Group 1-B), if the offense is punishable under Subsection (d), (e), or (f) of that section.

SECTION 4.  The change in law made by this Act applies 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 on the date 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, 2023.