88R23000 JSC-D

By:  Murr H.B. No. 4014

Substitute the following for H.B. No. 4014:

By:  Burrows C.S.H.B. No. 4014

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the carrying of a firearm by a member of a criminal street gang while engaged in certain criminal activity; creating a criminal offense; changing the eligibility for community supervision.

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

SECTION 1.  Section 125.0015(a), Civil Practice and Remedies Code, is amended to read as follows:

(a)  A person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance:

(1)  discharge of a firearm in a public place as prohibited by the Penal Code;

(2)  reckless discharge of a firearm as prohibited by the Penal Code;

(3)  engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

(4)  delivery, possession, manufacture, or use of a substance or other item in violation of Chapter 481, Health and Safety Code;

(5)  gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6)  prostitution as described by Section 43.02, Penal Code, solicitation of prostitution as described by Section 43.021, Penal Code, promotion of prostitution as described by Section 43.03, Penal Code, or aggravated promotion of prostitution as described by Section 43.04, Penal Code;

(7)  compelling prostitution as prohibited by the Penal Code;

(8)  commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;

(9)  aggravated assault as described by Section 22.02, Penal Code;

(10)  sexual assault as described by Section 22.011, Penal Code;

(11)  aggravated sexual assault as described by Section 22.021, Penal Code;

(12)  robbery as described by Section 29.02, Penal Code;

(13)  aggravated robbery as described by Section 29.03, Penal Code;

(14)  unlawfully carrying a weapon as described by Section 46.02, Penal Code, or unlawfully carrying a firearm as described by Section 46.025, Penal Code;

(15)  murder as described by Section 19.02, Penal Code;

(16)  capital murder as described by Section 19.03, Penal Code;

(17)  continuous sexual abuse of young child or disabled individual as described by Section 21.02, Penal Code;

(18)  massage therapy or other massage services in violation of Chapter 455, Occupations Code;

(19)  employing or entering into a contract for the performance of work or the provision of a service with an individual younger than 21 years of age for work or services performed at a sexually oriented business as defined by Section 243.002, Local Government Code;

(20)  trafficking of persons as described by Section 20A.02, Penal Code;

(21)  sexual conduct or performance by a child as described by Section 43.25, Penal Code;

(22)  employment harmful to a child as described by Section 43.251, Penal Code;

(23)  criminal trespass as described by Section 30.05, Penal Code;

(24)  disorderly conduct as described by Section 42.01, Penal Code;

(25)  arson as described by Section 28.02, Penal Code;

(26)  criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of $500 or more;

(27)  a graffiti offense in violation of Section 28.08, Penal Code; or

(28)  permitting an individual younger than 18 years of age to enter the premises of a sexually oriented business as defined by Section 243.002, Local Government Code.

SECTION 2.  Article 17.03(b-2), Code of Criminal Procedure, is amended to read as follows:

(b-2)  Except as provided by Articles 15.21, 17.033, and 17.151, a defendant may not be released on personal bond if the defendant:

(1)  is charged with:

(A)  an offense involving violence; or

(B)  an offense under Section 46.025, Penal Code; or

(2)  while released on bail or community supervision for an offense described by Subdivision (1) [~~involving violence~~], is charged with committing:

(A)  any offense punishable as a felony; or

(B)  an offense under the following provisions of the Penal Code:

(i)  Section 22.01(a)(1) (assault);

(ii)  Section 22.05 (deadly conduct);

(iii)  Section 22.07 (terroristic threat); or

(iv)  Section 42.01(a)(7) or (8) (disorderly conduct involving firearm).

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 46.025, 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.  Article 42A.102(b), Code of Criminal Procedure, is amended to read as follows:

(b)  In all other cases, the judge may grant deferred adjudication community supervision unless:

(1)  the defendant is charged with an offense:

(A)  under Section 20A.02, 20A.03, 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

(B)  under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i)  the defendant held a commercial driver's license or a commercial learner's permit; or

(ii)  the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.15 or more;

(C)  for which punishment may be increased under Section 49.09, Penal Code;

(D)  for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; [~~or~~]

(E)  under Section 481.1123, Health and Safety Code, that is punishable under Subsection (d), (e), or (f) of that section; or

(F)  under Section 46.025, Penal Code;

(2)  the defendant:

(A)  is charged with an offense under Section 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; and

(B)  has previously been placed on community supervision for an offense under Paragraph (A);

(3)  the defendant is charged with an offense under:

(A)  Section 21.02, Penal Code; or

(B)  Section 22.021, Penal Code, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code; or

(4)  the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

SECTION 5.  Section 9.31(b), Penal Code, is amended to read as follows:

(b)  The use of force against another is not justified:

(1)  in response to verbal provocation alone;

(2)  to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3)  if the actor consented to the exact force used or attempted by the other;

(4)  if the actor provoked the other's use or attempted use of unlawful force, unless:

(A)  the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B)  the other nevertheless continues or attempts to use unlawful force against the actor; or

(5)  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:

(A)  carrying a weapon in violation of Section 46.02; [~~or~~]

(B)  carrying a firearm in violation of Section 46.025; or

(C)  possessing or transporting a weapon in violation of Section 46.05.

SECTION 6.  Chapter 46, Penal Code, is amended by adding Section 46.025 to read as follows:

Sec. 46.025.  PROHIBITED CARRYING OF FIREARMS BY GANG MEMBERS. (a) In this section, "criminal street gang" has the meaning assigned by Section 71.01.

(b)  A person who is a member of a criminal street gang commits an offense if the person:

(1)  intentionally, knowingly, or recklessly carries on or about his or her person a firearm; and

(2)  is engaged in conduct constituting an offense that is a Class B misdemeanor or any higher category of offense:

(A)  listed in Section 42A.054(a), Code of Criminal Procedure;

(B)  listed in Section 71.02(a) of this code;

(C)  under Title 5 or 6 of this code;

(D)  under Subchapter D, Chapter 481, Health and Safety Code; or

(E)  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)  It is an affirmative defense to prosecution under this section that:

(1)  the person is not a member of a criminal street gang and the inclusion of the person's information in an intelligence database under Chapter 67, Code of Criminal Procedure, was in error; or

(2)  the person's information did not meet the submission criteria established under Article 67.054(b), Code of Criminal Procedure, for the inclusion of the person's information in an intelligence database under Chapter 67 of that code.

(d)  If conduct constituting an offense under this section also constitutes an offense under Section 46.02, the actor may be prosecuted only under this section.

(e)  An offense under this section is a felony of the third degree.

SECTION 7.  Section 46.04(e), Penal Code, is amended to read as follows:

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

SECTION 8.  Section 46.15(b), Penal Code, is amended to read as follows:

(b)  Sections 46.02 and[~~,~~] 46.03(a)(14)[~~, and 46.04(a-1)~~] do not apply to a person who:

(1)  is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 437.001, Government Code, or as a guard employed by a penal institution;

(2)  is traveling;

(3)  is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;

(4)  holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;

(5)  acts as a personal protection officer and carries the person's security officer commission and personal protection officer authorization, if the person:

(A)  is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B)  is either:

(i)  wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view; or

(ii)  not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner;

(6)  is carrying:

(A)  a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B)  a handgun:

(i)  in a concealed manner; or

(ii)  in a holster;

(7)  holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises; or

(8)  is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A)  on the immediate premises where the activity is conducted; or

(B)  en route between those premises and the person's residence and is carrying the weapon unloaded.

SECTION 9.  Section 46.04(a-1), Penal Code, is repealed.

SECTION 10.  (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply 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 subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b)  The change in law made by this Act in amending Article 17.03(b-2), Code of Criminal Procedure, applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

SECTION 11.  This Act takes effect September 1, 2023.