88R8943 JSC-D

By:  King S.B. No. 2042

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting the carrying of a handgun by a member of a criminal street gang while engaged in 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.  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 46.02(a-9), 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 2.  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 46.02(a-9), 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 3.  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 46.02(a-9), 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 4.  Section 46.02, Penal Code, is amended by adding Subsections (a-9), (a-10), and (f) to read as follows:

(a-9)  A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person:

(1)  intentionally, knowingly, or recklessly carries on or about his or her 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;

(2)  is engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating; and

(3)  is not on the person's own property or property under the person's control or on private property with the consent of the owner of the property.

(a-10)  If conduct constituting an offense under Subsection (a-9) also constitutes an offense under Subsection (a-1)(2)(A), the actor may be prosecuted only under Subsection (a-9).

(f)  An offense under Subsection (a-9) is a felony of the third degree.

SECTION 5.  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 6.  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 7.  Section 46.04(a-1), Penal Code, is repealed.

SECTION 8.  (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 9.  This Act takes effect September 1, 2023.