

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

1 AN ACT  
2 relating to prohibiting the carrying of a firearm by a member of a  
3 criminal street gang while engaged in certain criminal activity;  
4 creating a criminal offense; changing the eligibility for community  
5 supervision.

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

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

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

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

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

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

19 (4) delivery, possession, manufacture, or use of a  
20 substance or other item in violation of Chapter [481](#), Health and  
21 Safety Code;

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

24 (6) prostitution as described by Section [43.02](#), Penal

1 Code, solicitation of prostitution as described by Section 43.021,  
2 Penal Code, promotion of prostitution as described by Section  
3 43.03, Penal Code, or aggravated promotion of prostitution as  
4 described by Section 43.04, Penal Code;

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

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

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

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

14 (11) aggravated sexual assault as described by Section  
15 22.021, Penal Code;

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

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

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

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

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

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

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

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

8           (20) trafficking of persons as described by Section  
9 20A.02, Penal Code;

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

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

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

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

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

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

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

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

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

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

4 (1) is charged with:

5 (A) an offense involving violence; or

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

7 or

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

11 (A) any offense punishable as a felony; or

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

14 (i) Section 22.01(a)(1) (assault);

15 (ii) Section 22.05 (deadly conduct);

16 (iii) Section 22.07 (terroristic threat);

17 or

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

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

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

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

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

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

- 1           (4) Section 20.04, Penal Code (Aggravated  
2 Kidnapping);
- 3           (5) Section 20A.02, Penal Code (Trafficking of  
4 Persons);
- 5           (6) Section 20A.03, Penal Code (Continuous  
6 Trafficking of Persons);
- 7           (7) Section 21.11, Penal Code (Indecency with a  
8 Child);
- 9           (8) Section 22.011, Penal Code (Sexual Assault);
- 10          (9) Section 22.021, Penal Code (Aggravated Sexual  
11 Assault);
- 12          (10) Section 22.04(a)(1), Penal Code (Injury to a  
13 Child, Elderly Individual, or Disabled Individual), if:
- 14               (A) the offense is punishable as a felony of the  
15 first degree; and
- 16               (B) the victim of the offense is a child;
- 17          (11) Section 29.03, Penal Code (Aggravated Robbery);
- 18          (12) Section 30.02, Penal Code (Burglary), if:
- 19               (A) the offense is punishable under Subsection  
20 (d) of that section; and
- 21               (B) the actor committed the offense with the  
22 intent to commit a felony under Section 21.02, 21.11, 22.011,  
23 22.021, or 25.02, Penal Code;
- 24          (13) Section 43.04, Penal Code (Aggravated Promotion  
25 of Prostitution);
- 26          (14) Section 43.05, Penal Code (Compelling  
27 Prostitution);

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

3           (15-a) Section 46.025, Penal Code;

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

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

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

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

16           SECTION 4. Article 42A.102(b), Code of Criminal Procedure,  
17 is amended to read as follows:

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

20                   (1) the defendant is charged with an offense:

21                           (A) under Section 20A.02, 20A.03, 49.045, 49.05,  
22 49.065, 49.07, or 49.08, Penal Code;

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

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

27                                   (ii) the defendant's alcohol concentration,

1 as defined by Section 49.01, Penal Code, was 0.15 or more;

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

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

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

12 (F) under Section 46.025, Penal Code;

13 (2) the defendant:

14 (A) is charged with an offense under Section  
15 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of  
16 the age of the victim, or a felony described by Article 42A.453(b),  
17 other than a felony described by Subdivision (1)(A) or (3)(B) of  
18 this subsection; and

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

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

22 (A) Section 21.02, Penal Code; or

23 (B) Section 22.021, Penal Code, that is  
24 punishable under Subsection (f) of that section or under Section  
25 12.42(c)(3) or (4), Penal Code; or

26 (4) the defendant is charged with an offense under  
27 Section 19.02, Penal Code, except that the judge may grant deferred

1 adjudication community supervision on determining that the  
2 defendant did not cause the death of the deceased, did not intend to  
3 kill the deceased or another, and did not anticipate that a human  
4 life would be taken.

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

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

8 (1) in response to verbal provocation alone;

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

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

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

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

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

23 (5) if the actor sought an explanation from or  
24 discussion with the other person concerning the actor's differences  
25 with the other person while the actor was:

26 (A) carrying a weapon in violation of Section

27 46.02; [~~or~~]



1 (B) carrying a firearm in violation of Section  
2 46.025; or

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

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

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

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

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

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

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

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

19 (C) under Title 5 or 6 of this code;

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

22 (E) during the commission of which or during the  
23 immediate flight from the commission of which the firearm or other  
24 deadly weapon was used or exhibited.

25 (c) It is an affirmative defense to prosecution under this  
26 section that:

27 (1) the person is not a member of a criminal street

1 gang and the inclusion of the person's information in an  
2 intelligence database under Chapter 67, Code of Criminal Procedure,  
3 was in error; or

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

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

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

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

15 (e) An offense under Subsection (a) is a felony of the third  
16 degree. An offense under Subsection [~~(a-1)~~] (b)[~~7~~] or (c) is a  
17 Class A misdemeanor.

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

20 (b) Sections 46.02 and[~~7~~] 46.03(a)(14) [~~7~~ and ~~46.04(a-1)~~] do  
21 not apply to a person who:

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

26 (2) is traveling;

27 (3) is engaging in lawful hunting, fishing, or other

1 sporting activity on the immediate premises where the activity is  
2 conducted, or is en route between the premises and the actor's  
3 residence, motor vehicle, or watercraft, if the weapon is a type  
4 commonly used in the activity;

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

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

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

18 (B) is either:

19 (i) wearing the uniform of a security  
20 officer, including any uniform or apparel described by Section  
21 1702.323(d), Occupations Code, and carrying the officer's weapon in  
22 plain view; or

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

25 (6) is carrying:

26 (A) a license issued under Subchapter H, Chapter  
27 411, Government Code, to carry a handgun; and

1 (B) a handgun:

2 (i) in a concealed manner; or

3 (ii) in a holster;

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

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

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

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

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

16 SECTION 10. (a) Except as provided by Subsection (b) of  
17 this section, the changes in law made by this Act apply only to an  
18 offense committed on or after the effective date of this Act. An  
19 offense committed before the effective date of this Act is governed  
20 by the law in effect on the date the offense was committed, and the  
21 former law is continued in effect for that purpose. For purposes of  
22 this subsection, an offense was committed before the effective date  
23 of this Act if any element of the offense was committed before that  
24 date.

25 (b) The change in law made by this Act in amending Article  
26 17.03(b-2), Code of Criminal Procedure, applies only to a person  
27 who is arrested on or after the effective date of this Act. A person

1 arrested before the effective date of this Act is governed by the  
2 law in effect on the date the person was arrested, and the former  
3 law is continued in effect for that purpose.

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