

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);

1 or

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

4 SECTION 2. Article 42A.054(a), Code of Criminal Procedure,
5 is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (11) Section 29.03, Penal Code (Aggravated Robbery);
- 2 (12) Section 30.02, Penal Code (Burglary), if:
- 3 (A) the offense is punishable under Subsection
- 4 (d) of that section; and
- 5 (B) the actor committed the offense with the
- 6 intent to commit a felony under Section 21.02, 21.11, 22.011,
- 7 22.021, or 25.02, Penal Code;
- 8 (13) Section 43.04, Penal Code (Aggravated Promotion
- 9 of Prostitution);
- 10 (14) Section 43.05, Penal Code (Compelling
- 11 Prostitution);
- 12 (15) Section 43.25, Penal Code (Sexual Performance by
- 13 a Child);
- 14 (15-a) Section 46.02(a-9), Penal Code;
- 15 (16) Chapter 481, Health and Safety Code, for which
- 16 punishment is increased under:
- 17 (A) Section 481.140 of that code (Use of Child in
- 18 Commission of Offense); or
- 19 (B) Section 481.134(c), (d), (e), or (f) of that
- 20 code (Drug-free Zones) if it is shown that the defendant has been
- 21 previously convicted of an offense for which punishment was
- 22 increased under any of those subsections; or
- 23 (17) Section 481.1123, Health and Safety Code
- 24 (Manufacture or Delivery of Substance in Penalty Group 1-B), if the
- 25 offense is punishable under Subsection (d), (e), or (f) of that
- 26 section.

27 SECTION 3. Article 42A.102(b), Code of Criminal Procedure,

1 is amended to read as follows:

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

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

5 (A) under Section 20A.02, 20A.03, 49.045, 49.05,
6 49.065, 49.07, or 49.08, Penal Code;

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

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

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

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

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

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

23 (F) under Section 46.02(a-9), Penal Code;

24 (2) the defendant:

25 (A) is charged with an offense under Section
26 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of
27 the age of the victim, or a felony described by Article 42A.453(b),

1 other than a felony described by Subdivision (1)(A) or (3)(B) of
2 this subsection; and

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

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

6 (A) Section 21.02, Penal Code; or

7 (B) Section 22.021, Penal Code, that is
8 punishable under Subsection (f) of that section or under Section
9 12.42(c)(3) or (4), Penal Code; or

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

16 SECTION 4. Section 46.02, Penal Code, is amended by adding
17 Subsections (a-9), (a-10), and (f) to read as follows:

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

20 (1) intentionally, knowingly, or recklessly carries
21 on or about his or her person a handgun, including carrying a
22 handgun in a motor vehicle or watercraft that is owned by the person
23 or under the person's control;

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

27 (3) is not on the person's own property or property

1 under the person's control or on private property with the consent
2 of the owner of the property.

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

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

8 SECTION 5. Section 46.04(e), Penal Code, is amended to read
9 as follows:

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

13 SECTION 6. Section 46.15(b), Penal Code, is amended to read
14 as follows:

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

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

21 (2) is traveling;

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

27 (4) holds a security officer commission issued by the

1 Texas Private Security Board, if the person is engaged in the
2 performance of the person's duties as an officer commissioned under
3 Chapter 1702, Occupations Code, or is traveling to or from the
4 person's place of assignment and is wearing the officer's uniform
5 and carrying the officer's weapon in plain view;

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

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

13 (B) is either:

14 (i) wearing the uniform of a security
15 officer, including any uniform or apparel described by Section
16 1702.323(d), Occupations Code, and carrying the officer's weapon in
17 plain view; or

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

20 (6) is carrying:

21 (A) a license issued under Subchapter H, Chapter
22 411, Government Code, to carry a handgun; and

23 (B) a handgun:

24 (i) in a concealed manner; or

25 (ii) in a holster;

26 (7) holds an alcoholic beverage permit or license or
27 is an employee of a holder of an alcoholic beverage permit or

1 license if the person is supervising the operation of the permitted
2 or licensed premises; or

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

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

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

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

11 SECTION 8. (a) Except as provided by Subsection (b) of this
12 section, the changes in law made by this Act apply only to an
13 offense committed on or after the effective date of this Act. An
14 offense committed before the effective date of this Act is governed
15 by the law in effect on the date the offense was committed, and the
16 former law is continued in effect for that purpose. For purposes of
17 this subsection, an offense was committed before the effective date
18 of this Act if any element of the offense was committed before that
19 date.

20 (b) The change in law made by this Act in amending Article
21 17.03(b-2), Code of Criminal Procedure, applies only to a person
22 who is arrested on or after the effective date of this Act. A person
23 arrested before the effective date of this Act is governed by the
24 law in effect on the date the person was arrested, and the former
25 law is continued in effect for that purpose.

26 SECTION 9. This Act takes effect September 1, 2023.