

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: A. Johnson of Harris, Plesa,  
Morales of Maverick

H.B. No. 1442

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the prosecution of certain criminal conduct involving a  
3 reckless driving exhibition or racing on a highway and to the  
4 forfeiture of contraband as a result of a reckless driving  
5 exhibition.

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

7 SECTION 1. Article 59.01(2), Code of Criminal Procedure, is  
8 amended to read as follows:

9 (2) "Contraband" means property of any nature,  
10 including real, personal, tangible, or intangible, that is:

11 (A) used in the commission of:

12 (i) any first or second degree felony under  
13 the Penal Code;

14 (ii) any felony under Section 15.031(b),  
15 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal  
16 Code;

17 (iii) any felony under Chapter 43, Penal  
18 Code, except as provided by Paragraph (B);

19 (iv) any felony under The Securities Act  
20 (Title 12, Government Code); or

21 (v) any offense under Chapter 49, Penal  
22 Code, that is punishable as a felony of the third degree or state  
23 jail felony, if the defendant has been previously convicted three  
24 times of an offense under that chapter;

1 (B) used or intended to be used in the commission  
2 of:

3 (i) any felony under Chapter 481, Health  
4 and Safety Code (Texas Controlled Substances Act);

5 (ii) any felony under Chapter 483, Health  
6 and Safety Code;

7 (iii) a felony under Chapter 151, Finance  
8 Code;

9 (iv) any felony under Chapter 20A or 34,  
10 Penal Code;

11 (v) a Class A misdemeanor under Subchapter  
12 B, Chapter 365, Health and Safety Code, if the defendant has been  
13 previously convicted twice of an offense under that subchapter;

14 (vi) any felony under Chapter 32, Human  
15 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
16 involves a health care program, as defined by Section 35A.01, Penal  
17 Code;

18 (vii) a Class B misdemeanor under Chapter  
19 522, Business & Commerce Code;

20 (viii) a Class A misdemeanor under Section  
21 306.051, Business & Commerce Code;

22 (ix) any offense under Section 42.10, Penal  
23 Code;

24 (x) any offense under Section 46.06(a)(1)  
25 or 46.14, Penal Code;

26 (xi) any offense under Chapter 71, Penal  
27 Code;

1 (xii) any offense under Section 20.05,  
2 20.06, 20.07, 43.04, or 43.05, Penal Code;

3 (xiii) an offense under Section 326.002,  
4 Business & Commerce Code; ~~[or]~~

5 (xiv) a Class A misdemeanor or any felony  
6 under Section 545.420, Transportation Code, other than a Class A  
7 misdemeanor that is classified as a Class A misdemeanor based  
8 solely on conduct constituting a violation of Subsection (e)(2)(B)  
9 of that section; or

10 (xv) any offense punishable under Section  
11 42.03(d) or (e), Penal Code;

12 (C) the proceeds gained from the commission of a  
13 felony listed in Paragraph (A) or (B) of this subdivision, a  
14 misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), or (xii)  
15 of this subdivision, or a crime of violence;

16 (D) acquired with proceeds gained from the  
17 commission of a felony listed in Paragraph (A) or (B) of this  
18 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),  
19 (xi), or (xii) of this subdivision, or a crime of violence;

20 (E) used to facilitate or intended to be used to  
21 facilitate the commission of a felony under Section 15.031 or  
22 Chapter 43, Penal Code; or

23 (F) used to facilitate or intended to be used to  
24 facilitate the commission of an offense under Section 20.05, 20.06,  
25 or 20.07 or Chapter 20A, Penal Code.

26 SECTION 2. Section 42.03, Penal Code, is amended by adding  
27 Subsection (g) to read as follows:

1       (g) If conduct that constitutes an offense under this  
2 section also constitutes an offense under any other law, the actor  
3 may be prosecuted under this section or the other law, but not both.

4       SECTION 3. Section 71.02(a), Penal Code, is amended to read  
5 as follows:

6       (a) A person commits an offense if, with the intent to  
7 establish, maintain, or participate in a combination or in the  
8 profits of a combination or as a member of a criminal street gang,  
9 the person commits or conspires to commit one or more of the  
10 following:

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

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

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

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

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

1           (5-a) causing the unlawful delivery, dispensation, or  
2 distribution of a controlled substance or dangerous drug in  
3 violation of Subtitle B, Title 3, Occupations Code;

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

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

10           (8) any felony offense under Chapter 32;

11           (9) any offense under Chapter 36;

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

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

14           (12) any offense under Chapter 20A;

15           (13) any offense under Section 37.10;

16           (14) any offense under Section 38.06, 38.07, 38.09, or  
17 38.11;

18           (15) any offense under Section 42.10;

19           (16) any offense under Section 46.06(a)(1) or 46.14;

20           (17) any offense under Section 20.05 or 20.06;

21           (18) any offense under Section 16.02; ~~[ex]~~

22           (19) any offense punishable under Section 42.03(d) or  
23 (e);

24           (20) [~~19~~] any offense classified as a felony under  
25 the Tax Code; or

26           (21) any offense under Section 545.420,  
27 Transportation Code.

1           SECTION 4. The change in law made by this Act applies only  
2 to an offense committed on or after the effective date of this Act.  
3 An offense committed before the effective date of this Act is  
4 governed by the law in effect on the date the offense was committed,  
5 and the former law is continued in effect for that purpose. For  
6 purposes of this section, an offense was committed before the  
7 effective date of this Act if any element of the offense occurred  
8 before that date.

9           SECTION 5. This Act takes effect September 1, 2023.

**ADOPTED**

**MAY 15 2023**

*Latey Law*  
Secretary of the Senate

By: Paul Bellercont

\_\_\_\_.B. No. HB 1412

Substitute the following for \_\_\_\_B. No. \_\_\_\_\_:

By: Phil King

C.S.\_\_\_\_.B. No. \_\_\_\_\_

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14 (ii) any felony under Section 15.031(b),  
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16 Code;

17 (iii) any felony under Chapter 43, Penal  
18 Code, except as provided by Paragraph (B);

19 (iv) any felony under The Securities Act  
20 (Title 12, Government Code); or

21 (v) any offense under Chapter 49, Penal  
22 Code, that is punishable as a felony of the third degree or state  
23 jail felony, if the defendant has been previously convicted three  
24 times of an offense under that chapter;

1 (B) used or intended to be used in the commission  
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3 (i) any felony under Chapter 481, Health  
4 and Safety Code (Texas Controlled Substances Act);  
5 (ii) any felony under Chapter 483, Health  
6 and Safety Code;  
7 (iii) a felony under Chapter 151, Finance  
8 Code;  
9 (iv) any felony under Chapter 20A or 34,  
10 Penal Code;  
11 (v) a Class A misdemeanor under Subchapter  
12 B, Chapter 365, Health and Safety Code, if the defendant has been  
13 previously convicted twice of an offense under that subchapter;  
14 (vi) any felony under Chapter 32, Human  
15 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
16 involves a health care program, as defined by Section 35A.01, Penal  
17 Code;  
18 (vii) a Class B misdemeanor under Chapter  
19 522, Business & Commerce Code;  
20 (viii) a Class A misdemeanor under Section  
21 306.051, Business & Commerce Code;  
22 (ix) any offense under Section 42.10, Penal  
23 Code;  
24 (x) any offense under Section 46.06(a)(1)  
25 or 46.14, Penal Code;  
26 (xi) any offense under Chapter 71, Penal  
27 Code;



1 (xii) any offense under Section 20.05,  
2 20.06, 20.07, 43.04, or 43.05, Penal Code;

3 (xiii) an offense under Section 326.002,  
4 Business & Commerce Code; [~~or~~]

5 (xiv) [~~a Class A misdemeanor or~~] any  
6 offense [~~felony~~] under Section 545.420, Transportation Code [~~r~~  
7 ~~other than a Class A misdemeanor that is classified as a Class A~~  
8 ~~misdemeanor based solely on conduct constituting a violation of~~  
9 ~~Subsection (e)(2)(B) of that section]; or~~

10 (xv) any offense punishable under Section  
11 42.03(d) or (e), Penal Code;

12 (C) the proceeds gained from the commission of a  
13 felony listed in Paragraph (A) or (B) of this subdivision, a  
14 misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), [~~or~~]  
15 (xii), (xiv), or (xv) of this subdivision, or a crime of violence;

16 (D) acquired with proceeds gained from the  
17 commission of a felony listed in Paragraph (A) or (B) of this  
18 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),  
19 (xi), [~~or~~] (xii), (xiv), or (xv) of this subdivision, or a crime of  
20 violence;

21 (E) used to facilitate or intended to be used to  
22 facilitate the commission of a felony under Section 15.031 or  
23 Chapter 43, Penal Code; or

24 (F) used to facilitate or intended to be used to  
25 facilitate the commission of an offense under Section 20.05, 20.06,  
26 or 20.07 or Chapter 20A, Penal Code.

27 SECTION 2. Section 42.03, Penal Code, is amended by adding

1 Subsection (g) to read as follows:

2 (g) If conduct that constitutes an offense under this  
3 section also constitutes an offense under any other law, the actor  
4 may be prosecuted under this section or the other law, but not both.

5 SECTION 3. Section 71.02(a), Penal Code, is amended to read  
6 as follows:

7 (a) A person commits an offense if, with the intent to  
8 establish, maintain, or participate in a combination or in the  
9 profits of a combination or as a member of a criminal street gang,  
10 the person commits or conspires to commit one or more of the  
11 following:

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

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

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

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

25 (5) unlawful manufacture, delivery, dispensation, or  
26 distribution of a controlled substance or dangerous drug, or  
27 unlawful possession of a controlled substance or dangerous drug

- 1 through forgery, fraud, misrepresentation, or deception;
- 2 (5-a) causing the unlawful delivery, dispensation, or  
3 distribution of a controlled substance or dangerous drug in  
4 violation of Subtitle B, Title 3, Occupations Code;
- 5 (6) any unlawful wholesale promotion or possession of  
6 any obscene material or obscene device with the intent to wholesale  
7 promote the same;
- 8 (7) any offense under Subchapter B, Chapter 43,  
9 depicting or involving conduct by or directed toward a child  
10 younger than 18 years of age;
- 11 (8) any felony offense under Chapter 32;
- 12 (9) any offense under Chapter 36;
- 13 (10) any offense under Chapter 34, 35, or 35A;
- 14 (11) any offense under Section 37.11(a);
- 15 (12) any offense under Chapter 20A;
- 16 (13) any offense under Section 37.10;
- 17 (14) any offense under Section 38.06, 38.07, 38.09, or  
18 38.11;
- 19 (15) any offense under Section 42.10;
- 20 (16) any offense under Section 46.06(a)(1) or 46.14;
- 21 (17) any offense under Section 20.05 or 20.06;
- 22 (18) any offense under Section 16.02; [~~or~~]
- 23 (19) any offense punishable under Section 42.03(d) or  
24 (e);
- 25 (20) [~~(19)~~] any offense classified as a felony under  
26 the Tax Code; or
- 27 (21) any offense under Section 545.420,

1 Transportation Code.

2           SECTION 4. The change in law made by this Act applies only  
3 to an offense committed on or after the effective date of this Act.  
4 An offense committed before the effective date of this Act is  
5 governed by the law in effect on the date the offense was committed,  
6 and the former law is continued in effect for that purpose. For  
7 purposes of this section, an offense was committed before the  
8 effective date of this Act if any element of the offense occurred  
9 before that date.

10           SECTION 5. This Act takes effect September 1, 2023.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 15, 2023**

**TO:** Honorable Dade Phelan, Speaker of the House, House of Representatives

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE:** **HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition and the offense of racing on a highway subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. The bill would make certain property and proceeds related to such offenses subject to asset forfeiture.

The Office of Court Administration anticipates no significant fiscal impact to the state court system. It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Local Government Impact**

It is assumed that any fiscal impact to units of local government associated with enforcement, prosecution, supervision, or confinement would not be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JMc, SD, DDel, LBO, ESch, DGI

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**May 11, 2023**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition and the offense of racing on a highway subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. The bill would make certain property and proceeds related to such offenses subject to asset forfeiture.

The Office of Court Administration anticipates no significant fiscal impact to the state court system. It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Local Government Impact**

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**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JMc, DDeI, LBO, ESch, DGI

**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

May 8, 2023

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE:** **HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition and the offense of racing on a highway subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. The bill would make the property used in the commission of the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition subject to asset forfeiture.

The Office of Court Administration anticipates no significant fiscal impact to the state court system. It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Local Government Impact**

It is assumed that any fiscal impact to units of local government associated with enforcement, prosecution, supervision, or confinement would not be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JMc, DDel, LBO, DGI, ESch

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**March 19, 2023**

**TO:** Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition and to the forfeiture of contraband as a result of a reckless driving exhibition.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities and would make the property used in the commission of such an offense subject to asset forfeiture.

The Office of Court Administration anticipates no significant fiscal impact to the state court system. It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Local Government Impact**

It is assumed that any fiscal impact to units of local government associated with enforcement, prosecution, supervision, or confinement would not be significant.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JMc, DDel, LBO, DGI



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**88TH LEGISLATIVE REGULAR SESSION**

**May 11, 2023**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition.), **Committee Report 2nd House, Substituted**

The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition and the offense of racing on a highway subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. Under existing statute, the offense of obstructing a highway or passageway while engaging in a reckless driving exhibition is punishable as a Class A misdemeanor or as a state jail felony depending on the circumstances of the offense, and the offense of racing on a highway is punishable as a Class B misdemeanor through a second degree felony depending on the circumstances of the offense.

Increasing the penalty for an existing offense may result in additional demands upon state and local correctional resources due to a possible increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement.

In fiscal year 2022, there were 11 individuals arrested, 2 individuals placed on adult community supervision, no individuals placed on juvenile probation supervision, and no individuals admitted into an adult or juvenile state correctional institution for the offense of obstructing a highway or passageway while engaging in a reckless driving exhibition.

In fiscal year 2022, there were 1,439 individuals arrested, 229 individuals placed on adult community supervision, 23 individuals placed on juvenile probation supervision, 6 individuals admitted to an adult state correctional institution, and no individuals admitted to a juvenile state correctional institution for the offense of racing on a highway.

It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Source**

**Agencies:**

**LBB Staff:** JMc, DDel, LBO, ESch, DGI

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**88TH LEGISLATIVE REGULAR SESSION**

**May 8, 2023**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB1442** by Johnson, Ann (Relating to the prosecution of certain criminal conduct involving a reckless driving exhibition or racing on a highway and to the forfeiture of contraband as a result of a reckless driving exhibition.), **As Engrossed**

The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition and the offense of racing on a highway subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. Under existing statute, the offense of obstructing a highway or passageway while engaging in a reckless driving exhibition is punishable as a Class A misdemeanor or as a state jail felony depending on the circumstances of the offense, and the offense of racing on a highway is punishable as a Class B misdemeanor through a second degree felony depending on the circumstances of the offense.

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It is assumed that any impact on state correctional populations or on the demand for state correctional resources would not be significant.

**Source**

**Agencies:**

**LBB Staff:** JMc, DDel, LBO, DGI, ESch

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**  
**88TH LEGISLATIVE REGULAR SESSION**

**March 19, 2023**

**TO:** Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

**FROM:** Jerry McGinty, Director, Legislative Budget Board

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The bill would make the offense of obstructing a highway or passageway if committed while operating a motor vehicle and engaging in a reckless driving exhibition subject to penalty enhancement one category higher if the offense is committed while engaging in certain organized criminal activities. Under existing statute, the offense of obstructing a highway or passageway while engaging in a reckless driving exhibition is punishable as a Class A misdemeanor or as a state jail felony depending on the circumstances of the offense.

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**Source**

**Agencies:**

**LBB Staff:** JMc, DDeI, LBO, DGI, CMA