

- SUBJECT:** Consecutive sentencing for some offenses involving gang-related conduct
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Vaught
0 nays
4 absent — Christian, Hodge, Riddle, Vo
- SENATE VOTE:** On final passage, April 23 — 30-0, on Local and Uncontested Calendar
- WITNESSES:** For — (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney’s Office; Rebecca Forest, Immigration Reform Coalition of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; James Jones, Texas Police Chiefs Association; Maria Martinez, Brent Munhofen, Immigration Reform Coalition of Texas; Gary Tittle, Dallas Police Department)

Against — Matt Simpson, American Civil Liberties Union
- BACKGROUND:** Penal Code, sec. 3.03 provides that sentences for convictions of most offenses arising from the same criminal episode and prosecuted in a single action shall run concurrently.

Penal Code, sec. 71.01 defines “criminal street gang” as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.
- DIGEST:** SB 366 would amend Penal Code, sec. 3.03 to allow concurrent or consecutive sentences for convictions or plea agreements for gang-related offenses, unless the defendant’s case was transferred to the court from juvenile court.

Code of Criminal Procedure, ch. 42 would be amended to provide that, in the trial of an offense, on motion of the state attorney, the judge would make an affirmative finding of fact if the applicable conduct was engaged

in as part of the activities of a criminal street gang. The judge would be required to enter an affirmative finding of gang-related conduct in the judgment in the case.

The bill would take effect September 1, 2009. The changes to Penal Code, sec. 3.03 would apply only to offenses committed on or after this date, and the changes to Code of Criminal Procedure, ch. 42 would apply only to a judgment of conviction entered on or after this date.

**SUPPORTERS
SAY:**

By allowing judges to stack sentences for certain offenders involved in gang activity, SB 366 would help deter involvement in gangs and stem the growing threats posed by gang activity and membership. The presence of gangs in Texas has increased in recent years, and transnational gangs have established a foothold in the border area. These gangs are the primary channel for human and drug trafficking into the United States, weapons trafficking into Mexico and Central America, and the violence associated with these activities. By imposing harsher penalties and keeping gang members off the streets for longer, SB 366 would recognize the serious nature of gang activity and provide strong deterrence against gang involvement and crimes.

The bill would give judges a useful tool to help ensure that individuals involved in dangerous gang activities remained in prison. Stacking sentences would remain permissive, not mandatory.

With concurrent sentencing for offenses arising out of the same criminal episode, the offender is only punished once despite having committed multiple offenses. This bill would allow the offender to be punished for each crime, without separate trials that would be a drain on victims and court resources.

**OPPONENTS
SAY:**

Stacking sentences would not be an effective deterrent. The cost of keeping people imprisoned would be an increased financial burden on the state, and could divert resources away from other important efforts.