

SUBJECT: Penalties for engaging in organized criminal activity, directing gang

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Carter, Burnam, Leach, Moody, Toth

2 nays — Canales, Schaefer

1 absent — Hughes

SENATE VOTE: On final passage, April 24 — 30-0

WITNESSES: For — Robert Huseman, Tarrant County District Attorney's Office; (*Registered, but did not testify:* Donald Baker, Austin Police Department; Stephanie Gibson, Texas Retailers Association; Ballard C. Shapleigh, representing 34th District Attorney Jaime Esparza; Steven Tays, Bexar County Criminal District Attorney's Office; Ronnie Volkening Texas Retailers Association; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; Marc Levin, Texas Public Policy Foundation Center for Effective Justice

BACKGROUND: 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.

Engaging in organized criminal activity. Under Penal Code, sec. 71.02 a person commits the offense of engaging in organized criminal activity by committing, or conspiring to commit, certain offenses with the intent to establish, maintain, or participate in a combination of three or more persons, or in the profits of such a combination, or as a member of a criminal street gang. The list of offenses includes 19 categories, some with numerous individual offenses.

Offenses are punished one category higher than the most serious offense committed, except for first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), which remain first-degree felonies. Conspiring to commit an offense is the same category as the most serious offense conspired to commit.

Directing the activities of certain street gangs. Penal Code, sec. 71.023 makes directing the activities of certain street gangs a crime. A person commits the offense by knowingly initiating, organizing, planning, financing, directing, managing, or supervising a criminal street gang or a member of a gang. This crime must be done with the intent to benefit or promote the gang or to increase a person's standing in a gang. These offenses are first-degree felonies. This section includes a definition of criminal street gang that differs from the one in Penal Code, sec. 71.02.

Mandatory supervision. Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced.

Government Code, sec. 508.149(b) makes exceptions to this requirement and prohibits release on mandatory supervision if a parole panel finds that an inmate's good conduct time is not an accurate reflection of his or her potential for rehabilitation and that the inmate's release would endanger the public. Due to this provision, the program is sometimes called discretionary mandatory supervision.

In addition, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of certain crimes.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

Consideration for parole. In general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less. However, some inmates must serve longer portions of their sentences before being eligible for parole consideration.

Under Government Code, sec. 508.145(d), most “3g” offenders and some other offenders are ineligible for parole until their time served equals half their sentence or 30 years, whichever is less, without consideration of good conduct time, and a minimum of two years.

DIGEST:

Engaging in organized criminal activity. The bill would increase the minimum prison sentence that could be imposed for first-degree felonies for engaging in organized criminal activity from five years to 15 years.

Directing activities of a criminal street gang. SB 549 would change the definition of the crime of directing activities of a criminal street gang. The bill would eliminate requirements that the offense be committed by taking certain actions to benefit a gang or to promote a person's standing in the gang. Instead, the offense would be committed by taking certain actions relating to the commission of or conspiracy to commit specific offenses, which would be listed. These offenses would be the violent and serious offenses listed in Code of Criminal Procedure, art. 42.12, sec. 3g(a)(1), certain felonies involving deadly weapons, and first- or second-degree drug offenses.

Persons committing the crime would have to be part of the identifiable leadership of a gang. The bill would eliminate four actions that define the crime of directing a criminal street gang: initiating, organizing, planning, or managing a gang. It would leave three criteria: financing, directing, and supervising the gang.

The minimum prison sentence that could be imposed for first-degree felonies for directing activities of a criminal street gang would be increased from five years to 25 years.

The bill would eliminate a definition of criminal street gang that was unique to the crime of directing gang activities, leaving the definition in Penal Code, sec. 71.01 to govern this offense.

Parole eligibility. SB 549 would require persons convicted of engaging in organized criminal activity and directing the activities of criminal street gangs to serve longer in prison before being eligible for parole. Under the bill they would be ineligible for parole until their time served equaled half their sentence or 30 years, whichever was less, without consideration of good conduct time, and a minimum of two years.

Mandatory supervision. SB 549 would make first-degree felony offenses of engaging in organized criminal activity and directing the activities of criminal street gangs ineligible for release on mandatory supervision.

Effective date. The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

SB 549 is needed to better define the crimes of engaging in organized criminal activity and directing a criminal street gang and to adjust the punishments for them to better reflect their seriousness in relation to the underlying offenses they involve and to other offenses. The increased punishments in SB 549 would be appropriate for these dangerous offenders who encourage and direct the criminal activities of others.

SB 549 would address a problem with the punishments for the crimes of engaging in organized criminal activity and directing a street gang when they are punished as first-degree felonies. These crimes are punished one degree higher than the underlying offense to reflect the significance of these crimes and being the leader of others who commit them. However, when the underlying offense is a first-degree felony, the punishment remains at the first-degree felony level since it is already at the highest level, excepting a capital felony.

SB 549 would address this problem by increasing the minimum punishment prison term for these crimes when the underlying offense was a first-degree felony. Instead of a minimum of five years in prison, these offenders would serve 15 years, for engaging in organized criminal activity, or 25 years, for directing a criminal street gang.

SB 549 would address a similar problem with parole eligibility. Currently those who commit certain serious and violent crimes must serve one-half of their sentence before being considered for parole. However, those convicted of engaging in organized crime and directing a street gang must serve only one-quarter of their sentence before parole consideration, even when both convictions relate to the same underlying offense. SB 549 would address this inconsistency by requiring offenders convicted of engaging in organized crime and directing a street gang to serve at least one-half of their sentence before being parole eligible.

SB 549 would impose more consistency in punishments by prohibiting

release on mandatory supervision for first-degree offenses of engaging in organized criminal activity and directing a street gang. Other serious offenses fall under this prohibition and so should these crimes. Although release under this program can be denied, it can appear to be a presumed release, which requires the parole board to make specific findings to halt the release. By prohibiting release on mandatory supervision, SB 549 would recognize that this type of release is inappropriate, given the seriousness of these crimes.

The bill would adjust the definition of the crime of directing activities of a criminal street gang to focus on the type of crimes being committed rather than the type of gang. This would help ensure that prosecutions of this crime focused on the kingpin-type criminals who were involved in the most serious and dangerous offenses.

To be guilty of directing the activities of a criminal gang, persons would have to meet the range of criteria for the offense – which include being part of the identifiable leadership of a gang and knowingly financing, directing, or supervising, the listed offenses. Persons whose only crime was one of the listed offenses, including second-degree felony drug offenses, would not fall under the crime of directing activities of a criminal street gang. The crime of directing activities of a criminal street gang would be used only to go after gang kingpins directing others.

The bill also would eliminate the confusion resulting from having a separate definition under the crime of directing a street gang. Instead, this crime would use the standard definition used in the rest of Penal Code chapter on organized crime.

The small fiscal note associated with SB 549 would be an appropriate use of state resources to punish those convicted of serious crimes and to enhance public safety.

**OPPONENTS
SAY:**

It is unnecessary to impose mandatory minimum sentences within the first-degree penalty range used for engaging in organized crime and directing a criminal gang. Courts have discretion to assess penalties within the existing felony ranges so that cases can be handled individually and justice can be served. Courts would be aware that these cases involve persons directing criminal activity or criminal gangs and that the penalties generally are enhanced from the underlying offense. Courts would use discretion to impose any appropriate sentence within the range of two to

20 years.

SB 549 should not continue the trends of delaying parole eligibility and making offenses ineligible for mandatory supervision. While the crimes of engaging in organized crime and directing a criminal gang are serious offenses, each case should continue to be considered individually through these processes. With both parole and mandatory supervision, the decision to release an offender is discretionary with the parole board and being considered does not mean that an offender will be released.

**OTHER
OPPONENTS
SAY:**

When listing the offenses that those who are directing the activities of a street gang must be financing, supervising, or directing, SB 549 should limit the drug offenses to those that involve larger quantities than second-degree felonies.

NOTES:

The fiscal note estimates a cost of about \$2.2 million in general revenue through the upcoming biennium and \$5.8 million for fiscal 2016-17.