

BILL ANALYSIS

Senate Research Center
81R23005 E

C.S.S.B. 11
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Transportation & Homeland Security
4/8/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, criminal street gangs have become an increasing problem in Texas. Gang activity has grown in cities and rural areas, and cartel-style gangs based along the border with Mexico have moved into Texas. Dealing with this dangerous problem should be a priority. Currently, Chapter 71 (Organized Crime), Penal Code, establishes penalty increases for certain crimes committed in furtherance of gang activity.

This bill focuses on a number of issues related to the growth in gang activity in Texas including prevention of youth involvement in gangs, intervention programs to reduce gang involvement, the increase of penalties for certain offenses, and the creation of new offenses focused on deterring illegal gang activity, and the collection of information necessary to deal with the gang problem.

C.S.S.B. 11 provides for criminal and civil penalties and enforcement options for individuals committing offenses related to gang activity; addresses post-conviction and post-adjudication provisions; addresses graffiti; addresses penal provisions relating to firearms; addresses matters relating to license suspension; creates a law enforcement integrity unit to investigate organized criminal activity; and creates gang-free zones and provides for electronic monitoring of certain criminal street gang members.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Section 15.031(e), Penal Code, to provide that an offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor was at the time of the offense a member of a criminal street gang, as defined by Section 71.01 and committed the offense with the intent to further the criminal activities of the criminal street gang or avoid detection as a member of a criminal street gang.

SECTION 1.02. Amends Section 22.015(a) Penal Code, to define "family."

SECTION 1.03. Amends Section 22.015(b), Penal Code, to provide that a person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person threatens the child or a member of the child's family with imminent bodily injury or causes bodily injury to the child or a member of the child's family.

SECTION 1.04 Amends Chapter 33, Penal Code, by adding Section 33.06, as follows:

Sec. 33.06. ONLINE HARASSMENT TO FURTHER INTERESTS OF CRIMINAL STREET GANG. (a) Defines "commercial social networking site," "criminal street gang," and "electronic communication."

(b) Provides that a person commits an offense if the person sends an electronic communication or posts a message on an electronic message board or commercial social networking site with the intent to abuse, intimidate, harass, alarm, or

threaten another person; and benefit, promote, or further the interests of a criminal street gang.

(c) Provides that an offense under this section is a state jail felony.

SECTION 1.05. Amends Section 71.02(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a street gang, the person, rather than he, commits or conspires to commit one or more of certain crimes, including any offense under Section 28.08 (Graffiti); or any offense under Section 46.06(a)(1) (relating to an offense if a person sells, rents, leases, loans, or gives a handgun to any person in certain circumstances) or 46.14.

SECTION 1.06. Amends Chapter 71, Penal Code, by adding Sections 71.023, 71.028, and 71.029, as follows:

Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL STREET GANGS.

(a) Provides that a person commits an offense if the person knowingly initiates, organizes, plans, finances, directs, manages, or supervises a criminal street gang or members of a criminal street gang with the intent to benefit, promote, or further the interests of the criminal street gang or to increase the person's standing, position, or status in the criminal street gang.

(b) Provides that an offense under this section is a felony of the first degree.

(c) Defines "criminal street gang," notwithstanding Section 71.01 (Definitions).

Sec. 71.028. GANG-FREE ZONES. (a) Defines "institution of higher education," "playground," "premises," "school," "video arcade facility," "youth center," and "shopping mall."

(b) Provides that, except as provided by Subsection (c), the punishment prescribed for an offense under Section 71.02 (Engaging in Organized Criminal Activity) is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed to the offense at a location that was:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased by a school or school board; premises owned, rented, or leased by an institution of higher education; shopping mall; movie theater; premises of a public or private youth center; or playground;

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility; or

(3) on a school bus.

(c) Prohibits the punishment prescribed for an offense under Section 71.02 from being increased under this section if the offense is punishable under Section 71.02 as a felony of the first degree.

Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) Provides that in a prosecution of an offense for which punishment is increased under Section 71.028, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of gang-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those zones in the governing body or the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those zones.

(b) Authorizes a municipal or county engineer, on request of the governing body of the municipality or county, to revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) Requires a municipal or county engineer to file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the zone is located.

(d) Provides that this section does not prevent the prosecution from introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 71.028, or using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

SECTION 1.07. Makes application of Sections 15.031(e), 22.015(b), and 71.02(a), Penal Code, as amended by this Act, and Section 71.028, Penal Code, as added by this Act, prospective.

ARTICLE 2. CIVIL CONSEQUENCES AND LIABILITY

SECTION 2.01. Amends Subchapter D, Chapter 125, Civil Practice and Remedies Code, by adding Section 125.070, as follows:

Sec. 125.070. CIVIL ACTION FOR VIOLATION OF INJUNCTION. (a) Defines "governmental entity."

(b) Provides that a criminal street gang or a member of a criminal street gang is liable to the state or a governmental entity injured by the violation of a temporary or permanent injunctive order under this subchapter.

(c) Requires the plaintiff, in an action brought against a member of a criminal street gang, to show that the member violated the temporary or permanent injunctive order.

(d) Authorizes a district, county, or city attorney or the attorney general to sue for money damages on behalf of the state or a governmental entity. Authorizes a state or governmental entity, if the state or the governmental entity prevails in a suit under this section, to recover actual damages, a civil penalty in an amount not to exceed \$20,000 for each violation, and court costs and attorney's fees.

(e) Authorizes the property of the criminal street gang or a member of the street gang to be seized in execution on a judgment under this section.

(f) Requires the attorney general to deposit money received under this section for damages or as a civil penalty in the neighborhood and community recovery fund held by the attorney general outside the state treasury. Provides that money in the fund is held by the attorney general in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Requires that interest earned on money in the fund be credited to the fund. Requires the attorney general to account for money in the fund so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the fund held for the benefit of a different community or neighborhood.

(g) Requires a district, county, or city attorney who brings suit on behalf of a governmental entity to deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of the community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Authorizes money in the account to be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Requires that interest earned on money in the account be credited to the account. Requires the district, county, or city attorney to account for money in the account so that

money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the account held for the benefit of a different community or neighborhood.

(h) Provides that an action under this section brought by the state or a governmental entity does not waive sovereign or governmental immunity for any purpose.

SECTION 2.02. Reenacts Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B. 2278), Acts of the 80th Legislature, Regular Session, 2007, and amends it to redefine "contraband."

SECTION 2.03. Amends Chapter 59, Code of Criminal Procedure, by adding Article 59.011, as follows:

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. Authorizes the attorney representing the state, if property described by Article 59.01(2)(B)(x) (relating to any offense under Chapter 71, Penal Code) or (xi) (relating to any offense under Section 46.06(a)(1) or 46.14, Penal Code) is subject to forfeiture under this chapter and Article 18.18 (Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and Other Contraband), to proceed under either this chapter or that article.

SECTION 2.04. Makes application of Section 125.070, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 2.05. Makes application of Article 59.01(2), Code of Criminal Procedure, as amended by this Act, and Article 59.011, Code of Criminal Procedure as added by this Act, prospective.

ARTICLE 3. POST-CONVICTION AND POST-ADJUDICATION PROVISIONS

SECTION 3.01. Amends Article 42.01, Code of Criminal Procedure, by adding Section 9, to provide that, in addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0197.

SECTION 3.02. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0197, as follows:

Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. Requires the judge, in the trial of an offense, on the motion of the attorney representing the state to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the applicable conduct was engaged in as part of the activities of a criminal street gang as defined by Section 71.01 (Definitions), Penal Code.

SECTION 3.03. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to authorize that conditions of community supervision include, but not be limited to, the conditions that the defendant is required to avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang. Makes nonsubstantive changes.

SECTION 3.04. Amends Article 42.12, Code of Criminal Procedure, by adding Section 13E, as follows:

Sec. 13E. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF CRIMINAL STREET GANG WHO ARE PLACED ON COMMUNITY SUPERVISION. (a) Provides that this section applies only to a defendant who is identified as a member of a criminal street gang in an intelligence database established under Chapter 61 (Compilation of Information Pertaining to Criminal Combinations and Criminal Street Gangs); and has two or more times been previously convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of

community supervision or probation for, a felony offense under the laws of this state, another state, or the United States.

(b) Authorizes a court granting community supervision to a defendant described by Subsection (a), on the defendant's conviction of a felony offense, to require as a condition of community supervision that the defendant submit to tracking under an electronic monitoring service or other appropriate technological services designed to track a person's location.

SECTION 3.05. Amends Chapter 54, Family Code, by adding Section 54.0491, as follows:

Sec. 54.0491. GANG-RELATED CONDUCT. (a) Defines "criminal street gang" and "gang-related conduct."

(b) Requires a juvenile court, in a disposition hearing under Section 54.04 (Disposition Hearing) regarding a child who has been adjudicated to have engaged in delinquent conduct that is also gang-related conduct, to order the child to participate in a criminal street gang intervention program that is appropriate for the child based on the child's level of involvement in the criminal activities of a criminal street gang. Sets forth requirements for the intervention program.

(c) Requires a child to complete the intervention program, if the child required to attend a criminal street gang intervention program is committed to the Texas Youth Commission (TYC) as a result of the gang-related conduct, before being discharged from the custody of or released under supervision by TYC.

SECTION 3.06. Amends Subchapter G, Chapter 508, Government Code, by adding Section 508.227, as follows:

Sec. 508.227. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF CRIMINAL STREET GANG. (a) Provides that this section applies only to a releasee who is identified as a member of a criminal street gang in an intelligence database under Chapter 61, Code of Criminal Procedure; and has three or more times been convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States.

(b) Authorizes a parole panel to require as a condition of release on parole or to mandatory supervision that a releasee described by Subsection (a) submit to tracking under an electronic monitoring service or other appropriate technological services designed to track a person's location.

SECTION 3.07. Amends Section 3.03, Penal Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if each sentence is for a conviction of certain offenses, including an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure.

(b-1) Provides that Subsection (b)(4) (relating to an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure) does not apply to a defendant whose case was transferred to the court under Section 54.02 (Waiver of Jurisdiction and Discretionary Transfer to Criminal Court), Family Code.

SECTION 3.08. Provides that Section 9, Article 42.01, Code of Criminal Procedure, and Article 42.0197, Code of Criminal Procedure, as added by this Act, apply only to a judgment of conviction entered on or after the effective date of this Act.

SECTION 3.09. Makes application of Section 11(a), Article 42.12, Code of Criminal Procedure, as amended by this Act, and Section 13E, Article 42.12, Code of Criminal Procedure as added by this Act, prospective.

SECTION 3.10. Makes application of Section 54.0491, Family Code, as added by this Act, prospective.

SECTION 3.11. Makes application of Section 508.227, Government Code, as added by this Act, prospective.

SECTION 3.12. Makes application of Section 3.03(b), Penal Code, as amended by this Act, prospective.

ARTICLE 4. GRAFFITI

SECTION 4.01. Amends Subchapter C, Chapter 101, Civil Practice and Remedies Code, by adding Section 101.067, as follows:

Sec. 101.067. **GRAFFITI REMOVAL.** Provides that this chapter does not apply to a claim for property damage caused by the removal of graffiti under Section 250.007, Local Government Code.

SECTION 4.02. Amends Articles 102.0171(a) and (c), Code of Criminal Procedure, as follows:

(a) Requires a defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court to pay a juvenile delinquency prevention and graffiti eradication fee, rather than a \$50 juvenile delinquency prevention and graffiti eradication fee, as a cost of court. Prohibits the amount of the fee under this section from being less than \$50 or more than \$500. Requires the court, in setting the amount of the fee, to increase the fee based on the amount of pecuniary loss in the case and the number of times the defendant has been previously convicted of an offense under Section 28.08, Penal Code.

(c) Authorizes a fund designated by this subsection to be used only to provide funding for certain purposes, including providing funding for community art programs.

SECTION 4.03. Amends Section 54.0461(a), Family Code, to require the juvenile court, if a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, to order the child, parent, or other person responsible for the child's support to pay to the court a juvenile delinquency prevention fee, rather than a \$50 juvenile delinquency prevention fee, as a cost of court. Prohibits the amount of the fee under this section from being less than \$50 or more than \$500. Requires the court, in setting the amount of the fee, to increase the fee based on the amount of pecuniary resulting from the conduct and the number of times the child has been previously adjudicated as having engaged in delinquent conduct violating Section 28.08, Penal Code.

SECTION 4.04. Amends Section 102.041, Government Code, by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 102.041. **ADDITIONAL COURT COSTS ON CONVICTION IN DISTRICT COURT: CODE OF CRIMINAL PROCEDURE.** Requires the clerk of a district court to collect fees and costs under the Code of Criminal Procedure on conviction of a defendant, in certain amounts and cases, including a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure), set forth as not less than \$50 or more than \$500, rather than at \$5.

SECTION 4.05. Amends Section 102.061, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 102.061. **ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE.** Requires the clerk of a

statutory county court to collect fees and costs under the Code of Criminal Procedure on conviction of a defendant, including not less than \$50 or more than \$500, rather than \$5, for a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure).

SECTION 4.06. Amends Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to make a conforming change.

SECTION 4.07. Amends Section 103.0212, Government Code, as follows:

Sec. 103.0212. **ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE.** Requires an accused or defendant, or a party to a civil suit, as applicable, to pay certain fees and costs under the Family Code if ordered by the court or otherwise required, including in juvenile court a request fee for a teen court program, rather than an administration fee, (Sec. 54.032, Family Code) in an amount of \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10; a juvenile delinquency prevention fee (Sec. 54.0461, Family Code), in an amount not less than \$50 or more than \$500, rather than \$5; and a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code), in the amount of \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10.

SECTION 4.08. Amends Section 485.018(a), Health and Safety Code, to prohibit a political subdivision or an agency of this state from enacting an ordinance or rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

SECTION 4.09. Amends Chapter 250, Local Government Code, by adding Sections 250.006 and 250.007, as follows:

Sec. 250.006. **REGULATION OF SALE OF AEROSOL PAINT; SURCHARGE.** (a) Authorizes a county by order or a municipality by ordinance to require a person who sells aerosol paint to require proof of identification from the buyer before making a sale to that buyer, and record the sale in a log and maintain the log for at least two years after the date of the sale.

(b) Provides that an order adopted by a county under this section applies only in the unincorporated area of the county.

(c) Authorizes an order or ordinance adopted under this section to require a surcharge not to exceed one dollar on each sale. Authorizes money collected under this section to be used only for purposes related to graffiti abatement.

Sec. 250.007. **GRAFFITI REMOVAL.** (a) Authorizes a county by order or a municipality by ordinance to require the owner of property within the jurisdiction of the county or municipality to remove graffiti from the owner's property on receipt of notice from the county or municipality.

(b) Requires that the order or ordinance require a property owner to remove the graffiti on or before the 10th day after the date the property owner receives notice under Subsection (a), except that if the property owner requests the county or municipality, as applicable, to remove the graffiti on or before the 10th day after the date of receipt of the notice, the county or municipality may remove the graffiti and charge the expenses of removal to the property owner in accordance with a fee schedule adopted by the county or municipality.

(c) Requires that the notice required by Subsection (a) be given:

(1) personally to the owner in writing;

(2) by letter sent by certified mail, addressed to the property owner at the property owner's address as contained in the records of the appraisal district in which the property is located; or

(3) if service cannot be obtained under Subdivision (1) or (2), by publication at least once in a newspaper of general circulation in the county or municipality, by posting the notice on or near the front door of each building on the property to which the notice relates, or by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.

(d) Authorizes the county or municipality to assess expenses incurred under Subsection (b) against the property on which the work is performed to remove the graffiti.

(e) Requires the governing body of a county or municipality, to obtain a lien against the property for expenses incurred under Subsection (b), to file a statement of expenses with the county clerk. Requires that the statement of expenses contain the name of the property owner, if known; the legal description of the property; and the amount of expenses incurred under Subsection (b).

(f) Provides that a lien described by Subsection (e) attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to any previously recorded lien, and the rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by Subsection (e).

SECTION 4.10. Amends Chapter 30, Penal Code, by adding Section 30.021, as follows:

Sec. 30.021. BURGLARY OF BUILDING TO CREATE GRAFFITI. (a) Provides that a person commits an offense if, without the effective consent of the owner, the person enters a building, or any portion of a building, not then open to the public, with the intent to commit an offense under Section 28.08; remains concealed, with the intent to commit an offense under Section 28.08, in a building; or enters a building and commits or attempts to commit an offense under Section 28.08.

(b) Defines "enter."

(c) Provides that an offense under this section is a state jail felony.

SECTION 4.11. Makes application of Section 101.067, Civil Practice and Remedies Code, of this Act, prospective.

SECTION 4.12. Makes application of Articles 102.0171(a) and (c), Code of Criminal Procedure, and Sections 102.041, 102.061, and 102.081, Government Code, as amended by this Act, prospective.

SECTION 4.13. Makes application of Section 54.0461(a), Family Code, and Section 103.0212, Government Code, as amended by this Act, prospective.

ARTICLE 5. USE OF FALSE OR FICTITIOUS IDENTITY OR IDENTIFYING DOCUMENTS

SECTION 5.01. Amends Section 37.10, Penal Code, by adding Subsection (j), to provide that it is not a defense to prosecution under Subsection (a)(2) (relating to a person committing an offense if he makes, presents, or uses any record, document, or thing with knowledge of its falsity) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the

front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

SECTION 5.02. Amends Section 521.454, Transportation Code, by adding Subsection (d), to authorize the actor, if conduct constituting an offense under this section also constitutes an offense under another law, to be prosecuted under this section, the other law, or both.

SECTION 5.03. Amends Section 521.455, Transportation Code, by adding Subsection (c), to authorize the actor, if conduct constituting an offense under this section also constitutes an offense under another law, to be prosecuted under this section, the other law, or both.

SECTION 5.04. Amends Section 521.456, Transportation Code, by adding Subsection (e), to authorize the actor, if conduct constituting an offense under this section also constitutes an offense under another law, to be prosecuted under this section, the other law, or both.

SECTION 5.05. Makes application of Section 37.10(j), Penal Code, and Sections 421.454(d), 521.455(c), and 521.456(e), Transportation Code, as added by this Act, prospective.

ARTICLE 6. PENAL PROVISIONS RELATED TO FIREARMS

SECTION 6.01. Amends Chapter 46, Penal Code, by adding Section 46.14, as follows:

Sec. 46.14. FIREARM SMUGGLING. (a) Provides that a person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. Provides that for purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct on more than one occasion or for profit or any other form of remuneration.

(b) Provides that an offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) Provides that this section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) Authorizes the actor, if conduct that constitutes an offense under this section also constitutes an offense under any other law, to be prosecuted under this section, the other law, or both.

ARTICLE 7. INTELLIGENCE DATABASES

SECTION 7.01. Amends Article 61.02, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

(c) Requires that criminal information collected under this chapter relating to a criminal street gang, among other things, consist of, except as provided by Subsection (d), any two of the certain evidences, including a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format or medium to post photographs or other documentation identifying the individual as a member of a criminal street gang; evidence that the individual uses, in more than an incidental manner, criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of how or the means by which, rather than the format or medium in which, the symbols are displayed, that are associated with a criminal street gang that operates in an area frequented by the individual and described by Subparagraph (iv); evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution; or evidence of the individual's use of technology, including the Internet, to recruit new criminal street gang members.

(d) Provides that evidence described by Subsections (c)(2)(C)(iv) (relating to evidence that the individual frequents a documented area of a criminal street gang and associates with known criminal street gang members) and (vii) (relating to evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution) is not sufficient to create the eligibility of a person's information to be included in an intelligence database described by this chapter unless the evidence is combined with information described by another subparagraph of Subsection (c)(2)(C) (relating to certain evidences except as provided by Subsection (d)).

(e) Defines "family member" and "penal institution."

SECTION 7.02. Amends Article 61.06(b), Code of Criminal Procedure, to require that information collected under this chapter relating to a criminal street gang, subject to Subsection (c) (relating to the removal of information from an intelligence database), be removed from an intelligence database established under Article 61.02 (Criminal Combination and Criminal Street Gang Intelligence Database; Submission Criteria) and the intelligence database maintained by the DPS under Article 61.03 (Release of Information) after five, rather than three, years if the information meets certain requirements.

SECTION 7.03. Reenacts Article 61.06(c), Code of Criminal Procedure, as amended by Chapters 258 (S.B. 111), 263 (S.B. 103), and 1308 (S.B. 1909), Acts of the 80th Legislature, Regular Session, 2007, and amends it to provide that in determining whether information is required to be removed from an intelligence database under Subsection (b), the five-year, rather than three-year, period does not include any period during which the individual who is the subject of the information is confined or committed to a certain facility.

SECTION 7.04. Provides that Article 61.06, Code of Criminal Procedure, as amended by this Act, applies to any applicable information maintained in an intelligence database under Chapter 61 of that code on or after the effective date of this Act.

ARTICLE 8. LICENSE SUSPENSION

SECTION 8.01. Amends Section 521.343(a), Transportation Code, to include Section 521.352 as an exception to the provision that a suspension of a driver's license under this subchapter is for one year.

SECTION 8.02. Amends Subchapter O, Chapter 521, Transportation Code, by adding Section 521.352, as follows:

Sec. 521.352. **SUSPENSION FOR CERTAIN ORGANIZED CRIME OFFENSES.** (a) Provides that a person's license is automatically suspended on conviction of the person for an offense under Chapter 71, Penal Code.

(b) Prohibits DPS from issuing a driver's license to a person convicted of an offense specified in Subsection (a) who, on the date of the conviction, did not hold a license.

(c) Provides that the period of license suspension or prohibition under this section begins on a date set by the court that is not earlier than the date of conviction or later than the 30th day after the date of conviction. Provides that the period of license suspension or prohibition under this section expires on the first anniversary of the date the suspension or prohibition began.

SECTION 8.03. Amends Section 521.457, Transportation Code, by amending Subsection (e) and adding Subsection (f-2), as follows:

(e) Provides that an offense under this section is a Class C misdemeanor, except as provided by Subsections (f), (f-1), and (f-2). Makes nonsubstantive changes.

(f-2) Provides that an offense is a Class A misdemeanor if it is shown on trial of an offense under this section that the person operated a motor vehicle on a highway during a period that the person's driver's license was suspended under Section 521.352 or the person was prohibited from obtaining a driver's license under that section.

SECTION 8.04. Makes application of this article prospective.

ARTICLE 9. MISCELLANEOUS PROVISIONS

SECTION 9.01. Amends Article 18.20, Code of Criminal Procedure, by adding Section 9A, as follows:

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) Provides that the requirements of Sections 8(a)(2)(B) (relating to a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted) and 9(b)(2) (relating to the nature and location of the communications facilities as to which or the place where authority to intercept is granted) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply if:

(1) in the case of an application for an order authorizing the interception of an oral communication the application contains a full and complete statement as to why the specification is not practical and identifies the person committing or believed to be committing the offense and whose communications are to be intercepted, and a judge of competent jurisdiction finds that the specification is not practical; and

(2) in the case of an application for an order authorizing the interception of a wire or electronic communication the application identifies the person committing or believed to be committing the offense and whose communications are to be intercepted, a judge of competent jurisdiction finds that the applicant has made an adequate showing of probable cause to believe that the actions of the person identified in the application could have the effect of thwarting interception from a specified facility, and the authority to intercept a wire or electronic communication under the order is limited to a period in which it is reasonable to presume that the person identified in the application will be reasonably proximate to the interception device.

(b) Authorizes a person implementing an order authorizing the interception of an oral communication that, in accordance with this section, does not specify the facility from which or the place where a communication is to be intercepted, to begin interception only after the person ascertains the place where the communication is to be intercepted.

(c) Authorizes a provider of wire or electronic communications that receives an order authorizing the interception of a wire or electronic communication that, in accordance with this section, does not specify the facility from which or the place where a communication is to be intercepted to move the court to modify or quash the order on the ground that the provider's assistance with respect to the interception cannot be performed in a timely or reasonable fashion. Requires the court, on notice to the state, to decide the motion expeditiously.

SECTION 9.02. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0207, as follows:

Sec. 411.0207. LAW ENFORCEMENT INTEGRITY UNIT. (a) Defines "organized criminal activity."

(b) Provides that a law enforcement integrity unit (unit) is created within the Department of Public Safety of the State of Texas (DPS) to investigate and assist

in the management of allegations of participation in organized criminal activity by an individual elected, appointed, or employed to serve as a peace officer for a governmental entity of this state under Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, or a federal law enforcement officer while performing duties in this state.

(c) Sets forth certain required responsibilities and duties of the unit.

(d) Authorizes the highest-ranking officer of the Texas Rangers division of DPS, on written approval of the director or of the chair of the Public Safety Commission, to initiate an investigation of an allegation of participation in organized criminal activity by a law enforcement officer described by Subsection (b)(1) (relating to the management of allegations of participation in organized criminal activity by an individual elected, appointed, or employed to serve as a peace officer for a governmental entity of this state under Article 2.12, Code of Criminal Procedure). Requires that written approval under this subsection be based on cause.

(e) Requires a state or local law enforcement agency, to the extent allowed by law, to cooperate with the law enforcement integrity unit by providing information requested by the unit as necessary to carry out the purposes of this section. Provides that information described by this subsection is excepted from required disclosure under Chapter 552 (Public Information) in the manner provided by Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information).

SECTION 9.03. Amends Section 421.082, Government Code, by adding Subsections (e), (f), and (g), as follows:

(e) Requires the Texas Fusion Center to annually submit to the governor and the legislature a report regarding criminal street gangs and gang-related crime. Requires that the report include:

(1) an evaluation of the threat that criminal street gangs and gang-related crime pose to communities in this state that are at or near the international border between this state and the United Mexican States;

(2) an evaluation of the threat that criminal street gangs and gang-related crime occurring at or near the border pose to other areas of this state;

(3) identification of any law enforcement strategies in this state or another jurisdiction that have been effective in preventing the growth or proliferation of criminal street gangs or gang-related crime; and

(4) recommendations on actions that are authorized to be taken to prevent criminal street gangs from committing human trafficking offenses; reduce criminal street gang violence throughout this state, with specific recommendations concerning reduction of criminal street gang violence at or near the border; prevent the growth or proliferation of criminal street gangs throughout this state, with specific recommendations concerning prevention of the growth or proliferation of criminal street gangs at or near the border; and ensure that law enforcement personnel receive the necessary training and education to effectively deal with the problems created by criminal street gangs and gang-related crime.

(f) Requires a criminal justice or juvenile justice agency of this state, on request, to provide to the center information relating to criminal street gangs and gang-related crime.

(g) Prohibits the report required under Subsection (e) from containing any information that is considered sensitive intelligence information by the agency

that provided the information; or could jeopardize an ongoing information being conducted by the agency that provided the information.

SECTION 9.04. Provides that Section 9A, Article 18.20, Code of Criminal Procedure, as added by this Act, applies only to an application for an order authorizing the interception of a wire, oral, or electronic communication that is submitted on or after the effective date of this Act. Provides that an application that was submitted before the effective date of this Act is covered by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 9.05. Requires DPS, not later than December 1, 2010, to establish the law enforcement integrity unit under Section 411.0207, Government Code, as added by this Act.

SECTION 9.06. Requires the Texas Fusion Center to submit the first annual report regarding criminal street gangs and gang-related crime to the governor and the legislature as required by Section 421.082(e), Government Code, as added by this Act, not later than September 1, 2010.

ARTICLE 10. CONFLICT OF LAW AND EFFECTIVE DATE PROVISIONS

SECTION 10.01. Provides that to the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10.02. Effective date: September 1, 2009.