

## **BILL ANALYSIS**

Senate Research Center  
81R2545 KEL-D

S.B. 366  
By: Carona  
Transportation & Homeland Security  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

An interim study undertaken by the Senate Committee on Transportation & Homeland Security found that many gang members become involved in criminal street gang activity at an early age and continue to be involved in illegal gang activity throughout adulthood. This propensity for repeat criminal activity is alarming for many reasons, particularly the lack of regard for the rule of law that it indicates. Prevention of repeat offenses by gang members must be a high priority in Texas.

Currently, when an offender is prosecuted and convicted under certain statutes, Section 3.03 (Sentences for Offenses Arising Out of Same Criminal Episode), Penal Code, gives the judge discretion when sentencing to require that the time of incarceration for separate offenses be served consecutively, commonly known as stacking the sentences, rather than allowing the time to be served concurrently. Those offenses that a judge is authorized to require to be served consecutively include intoxication assault, intoxication manslaughter, certain sexual offenses, and a number of other specific offenses.

As proposed, S.B. 366 requires that sentences for convictions of gang members and inmates of the Texas Department of Criminal Justice who commit an offense while incarcerated for a preceding conviction be served consecutively.

### **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. Amends Article 42.08(b), Code of Criminal Procedure, to require the court to order the sentence imposed in a second or subsequent, rather than for the subsequent, conviction to commence immediately on completion of the sentence imposed in a preceding conviction if the defendant committed the offense that is the subject of the second or subsequent conviction while the defendant was an inmate in the Texas Department of Criminal Justice (TDCJ) serving the sentence imposed in a preceding conviction; or the judgment for each conviction includes, as a finding or as an element of the underlying offense, participation in a criminal street gang as defined by Section 71.01 (Definitions), Penal Code. Deletes existing text requiring the judge, if a defendant is sentenced for an offense committed while the defendant was an inmate in the institutional division of TDCJ and the defendant has not completed the sentence he was serving at the time of the offense, to order the sentence for the subsequent offense to commence immediately on completion of the sentence for the original offense.

SECTION 2. Amends Section 3.03(a), Penal Code, to require that the sentences, except as provided by Subsection (b) (relating to circumstances under which the sentences may run concurrently or consecutively if the accused is found guilty of more than one offense arising out of the same criminal episode) and Section 3.05, run concurrently.

SECTION 3. Amends Section 3.04(b), Penal Code, to provide that in the event of severance under this section, the provisions of Section 3.03 do not apply, and, authorizes the court in its discretion, except as provided by Section 3.05, to order the sentences to run either concurrently or consecutively.

SECTION 4. Amends Chapter 3, Penal Code, by adding Section 3.05, as follows:

Sec. 3.05. MULTIPLE OFFENSES COMMITTED BY MEMBER OF CRIMINAL STREET GANG. (a) Provides that if the defendant is convicted of more than one offense arising out of the same criminal episode and the judgment of conviction with respect to each offense includes, as a finding or as an element of the offense, participation in a criminal street gang as defined by Section 71.01, the sentences for the offenses run consecutively.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2009.