

BILL ANALYSIS

Senate Research Center
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S.B. 423
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Most people who join gangs are drawn into a lifestyle that includes criminal activity. Criminal activity usually leads a person to arrest for and then conviction of a crime.

When convicted, an offender may be placed on community supervision, in which case the offender may be permitted to continue living and working in the offender's community without many enforceable restrictions on daily activities. In this event, there may be strong temptations for the offender to continue in the gang lifestyle, including by staying in contact with other gang members. When this happens, the offender is subjected to the same negative influences that brought the offender to conviction in the first place.

Currently, Section 11 (Basic Conditions of Community Supervision), Article 42.12 (Community Supervision), Code of Criminal Procedure, contains a nonexclusive list of conditions that a judge may impose on a person who has been placed on community supervision. Included in the list of conditions is a requirement that the person placed on community supervision "avoid persons or places of disreputable or harmful character." This discretionary condition is the only condition that might restrict a person on community supervision from associating with other gang members; however, it is not mandatory that a judge impose this condition on a person placed on community supervision. The bill would help address the important problems associated with high recidivism rates for gang members by reducing the negative influences on gang members who have been placed on community supervision.

As proposed, S.B. 423 requires that, when a judge finds that an offender is a member of a criminal street gang at the time the offense at issue was committed and the offender is placed on community supervision, a condition of that offender's community supervision prohibits the offender from knowingly communicating with another member of a criminal street gang.

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 Chapter 42, Code of Criminal Procedure, by adding Article 42.0145 as follows:

Art. 42.0145. FINDING THAT OFFENSE WAS COMMITTED BY A MEMBER OF A CRIMINAL STREET GANG. Requires the judge, in the trial of an offense, to make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if, at the guilt or innocence phase of the trial, the trier of fact determines beyond a reasonable doubt that at the time the offense was committed, the defendant was a member of a criminal street gang as defined by Section 71.01 (Definitions), Penal Code.

SECTION 2. Amends Article 42.12, Code of Criminal Procedure, by adding Section 13E as follows:

Sec. 13E. COMMUNITY SUPERVISION FOR OFFENSE COMMITTED BY A MEMBER OF A CRIMINAL STREET GANG. Requires a court granting community supervision to a defendant convicted of an offense for which the court has made an

affirmative finding under Article 42.0145 to require as a condition of community supervision that the defendant not knowingly communicate with another member of a criminal street gang except as authorized by the court or by an employee of a law enforcement agency, as defined by Article 59.01 (Definitions), for the purpose of aiding in a criminal investigation.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.