

BILL ANALYSIS

Senate Research Center
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H.B. 3384
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature created a category of felonies known as state jail felonies nearly 20 years ago. This category was created to punish the lowest-level felony offenders in an effort to reserve state prison beds, one of the most expensive punishment resources, for increased incarceration of the most dangerous felons. Observers note, however, that amendments have been made to the state jail statute over the years that have enhanced the punishment of state jail felonies to the more serious ranges of punishment associated with first, second, and third degree felonies and that have classified more serious state jail offenses as aggravated offenses.

It is further noted by interested parties that if it is shown on the trial of a state jail felony offense that the defendant has previously been finally convicted of two state jail felonies, the offense may carry the punishment of a third degree felony or it may carry the punishment of a second degree felony if the individual has been previously convicted of two felonies and the second felony is for an offense that occurred subsequent to the first previous conviction becoming final. The parties note that legislation is needed to clarify the meaning those provisions and to specify that the felonies do not include state jail offenses that are not aggravated. H.B. 3384 seeks to remain true to the intent of the legislature when it created the lower-level category of state felony offenses and to retain the special treatment given to state jail offenses punishable as aggravated state jail felonies.

H.B. 3384 amends current law relating to the penalties for repeat and habitual felony offenders.

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 the heading to Section 12.42, Penal Code, to read as follows:

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS
ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY.

SECTION 2. Amends Sections 12.42(a) and (b), Penal Code, as follows:

(a) Requires the defendant to be punished for a felony of the second degree if, except as provided by Subsection (c)(2) (relating to requiring a defendant to be punished by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life for certain crimes), it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a) (relating to requiring an individual adjudged guilty of a state jail felony to be punished by confinement in a state jail for any term of not more than two years or less than 180 days, except if certain facts are shown on the trial of the offense).

Deletes existing text requiring the defendant to be punished for a third-degree felony if it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies. Deletes

existing text requiring the defendant to be punished for a second-degree felony if it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final. Deletes existing text requiring a defendant to be punished for a second-degree felony, except as provided by Subsection (c)(2), if it is shown on the trial of a state jail felony punishable under Section 12.35(c) (relating to requiring an individual adjudged guilty of a state jail felony to be punished for a third degree felony if it is shown on the trial of the offense that a deadly weapon was used or exhibited during the commission of or during immediate flight following the commission of the offense, and that the individual used or exhibited the weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited, or if the individual has previously been finally convicted of certain other felonies) or on the trial of a third-degree felony that the defendant has been once before convicted of a felony.

(b) Requires the defendant to be punished for a felony of the first degree, except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), rather than requiring a defendant to be punished for a first degree felony if it is shown on the trial of a second-degree felony that the defendant has been once before convicted of a felony, except as provided by Subsection (c)(2).

SECTION 3. Amends Section 12.42(c), Penal Code, by amending Subdivision (1) and adding Subdivision (5), as follows:

(1) Requires a defendant to be punished by imprisonment in TDCJ for life, or for any term of not more than 99 years or less than 15 years if it is shown on the trial of a felony of the first degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), rather than requiring a defendant to be punished by imprisonment in TDCJ for life, or for any term of not more than 99 years or less than 15 years if it is shown on the trial of a first-degree felony that the defendant has been once before convicted of a felony.

(5) Prohibits a previous conviction for a state jail felony punishable under Section 12.35(a) from being used for enhancement purposes under Subdivision (2) (relating to requiring a defendant to be punished by imprisonment in TDCJ for life for certain crimes).

SECTION 4. Amends Section 12.42(d), Penal Code, as follows:

(d) Prohibits a previous conviction for a state jail felony punishable under Section 12.35(a) from being used for enhancement purposes under this subsection. Makes a nonsubstantive change.

SECTION 5. Amends Subchapter D, Chapter 12, Penal Code, by adding Section 12.425, as follows:

Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) Requires a defendant to be punished for a felony of the third degree if it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a).

(b) Requires a defendant to be punished for a felony of the second degree if it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final.

(c) Requires a defendant to be punished for a felony of the second degree if it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35(c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a).

SECTION 6. Repealer: Section 12.42(e) (relating to prohibiting a previous conviction for a state jail felony punished under Section 12.35(a) from being used for enhancement purposes in certain cases), Penal Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2011.