

BILL ANALYSIS

Senate Research Center

S.B. 1900
By: Birdwell
Border Security
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In response to the Biden Administration's lack of action in securing our southern border, Governor Greg Abbott launched Operation Lone Star to combat the record number of illegal immigrants and the increased smuggling of humans, drugs, and weapons into our state and nation. The growing national fentanyl crisis continues to take the lives of Americans as Mexican drug cartels disguise fentanyl as counterfeit pills and find new ways to smuggle humans and drugs across our border.

As a result, in September 2022, Governor Abbott issued an executive order designating Mexican cartels as terrorist organizations. Mexican drug cartels are the primary bad actors causing increased smuggling of humans and drugs flowing across our border. Despite the state's best efforts, which includes seizing enough fentanyl to kill every man, woman, and child in America, Texas continues to face record-breaking numbers of criminal activity as a result of Mexican cartel operations. While the federal government fails to enforce immigration laws, Texas will continue to find new ways to combat the devastation caused by the border crisis and Mexican drug cartels.

C.S.S.B. 1900 defines and adds foreign terrorist organizations to organized crime under state law. This legislation also adds new criminal offenses to organized crime including the distribution of drugs and the operation of stash houses. This bill also adds foreign terrorist organizations to current intelligence databases and allows local entities to seek public nuisance claims against foreign terrorist organizations.

S.B. 1900 amends current law relating to foreign terrorist organizations, including the compilation of information regarding, certain civil actions brought against, and the prosecution of certain organized crime offenses involving a foreign terrorist organization and of sedition.

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 Subchapter D, Chapter 125, Civil Practice and Remedies Code, to read as follows:

SUBCHAPTER D. MEMBERSHIP IN CRIMINAL STREET GANG OR FOREIGN TERRORIST ORGANIZATION

SECTION 2. Amends Sections 125.061(1) and (3), Civil Practice and Remedies Code, to define "foreign terrorist organization" and to redefine "gang activity."

SECTION 3. Amends Section 125.062, Civil Practice and Remedies Code, as follows:

Sec. 125.062. PUBLIC NUISANCE; COMBINATION. Provides that a combination, criminal street gang, or foreign terrorist organization that continuously or regularly associates in gang activities is a public nuisance. Makes a nonsubstantive change.

SECTION 4. Amends Section 125.063, Civil Practice and Remedies Code, as follows:

Sec. 125.063. PUBLIC NUISANCE; USE OF PLACE. Provides that the habitual use of a place by a combination, criminal street gang, or foreign terrorist organization for engaging in gang activity is a public nuisance. Makes a nonsubstantive change.

SECTION 5. Amends Section 125.064(b), Civil Practice and Remedies Code, as follows:

(b) Authorizes any person who habitually associates with others to engage in gang activity as a member of a combination, criminal street gang, or foreign terrorist organization to be made a defendant in the suit. Makes a nonsubstantive change.

SECTION 6. Amends Section 125.065(a), Civil Practice and Remedies Code, as follows:

(a) Authorizes the court, if the court finds that a combination, criminal street gang, or foreign terrorist organization constitutes a public nuisance, to enter an order:

(1) enjoining a defendant in the suit from engaging in the gang activities of the combination, criminal street gang, or foreign terrorist organization; and

(2) imposing other reasonable requirements to prevent the combination, criminal street gang, or foreign terrorist organization from engaging in future gang activities.

Makes nonsubstantive changes.

SECTION 7. Amends Section 125.069, Civil Practice and Remedies Code, as follows:

Sec. 125.069. USE OF PLACE; EVIDENCE. Provides that proof that gang activity by a member of a combination, a criminal street gang, or a foreign terrorist organization is frequently committed at a place or proof that a place is frequently used for engaging in gang activity by a member of a combination, a criminal street gang, or a foreign terrorist organization, in an action brought under Subchapter D (Membership in Criminal Street Gang), is prima facie evidence that the proprietor knowingly permitted the act, unless the act constitutes conspiring to commit gang activity. Makes nonsubstantive changes.

SECTION 8. Amends Sections 125.070(b), (c), and (e), Civil Practice and Remedies Code, as follows:

(b) Provides that a criminal street gang or foreign terrorist organization or a member of a criminal street gang or foreign terrorist organization 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 to show that the member violated the temporary or permanent injunctive order in an action brought against a member of a criminal street gang or a member of a foreign terrorist organization.

(e) Authorizes the property of the criminal street gang or foreign terrorist organization or a member of the criminal street gang or foreign terrorist organization to be seized in execution on a judgment under Section 125.070 (Civil Action for Violation of Injunction). Prohibits property from being seized under this subsection if the owner or interest holder of the property proves by a preponderance of the evidence that the owner or interest holder was not a member of the criminal street gang or foreign terrorist organization and did not violate the temporary or permanent injunctive order. Requires the owner or interest holder of property that is in the possession of a criminal street gang or foreign terrorist organization or a member of the criminal street gang or foreign terrorist organization and that is subject to execution under this subsection to show that the property:

(1) makes no change to this subdivision; or

(2) was used or intended to be used without the effective consent of the owner or interest holder by the criminal street gang or foreign terrorist organization or a member of the criminal street gang or foreign terrorist organization.

SECTION 9. Amends Article 67.001, Code of Criminal Procedure, by adding Subdivision (8-a) and amending Subdivision (9) to define "foreign terrorist organization" and redefine "intelligence database."

SECTION 10. Amends Articles 67.051(a) and (b), Code of Criminal Procedure, as follows:

(a) Requires a criminal justice agency or juvenile justice agency, subject to Subsection (b), to compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of combinations, criminal street gangs, or foreign terrorist organizations. Makes a nonsubstantive change.

(b) Requires a law enforcement agency in a municipality with a population of 50,000 or more or in a county with a population of 100,000 or more to compile and maintain in a local or regional intelligence database criminal information relating to a criminal street gang or a foreign terrorist organization as provided by Subsection (a).

SECTION 11. Amends Article 67.054(b), Code of Criminal Procedure, as follows:

(b) Requires that criminal information collected under Chapter 67 (Compilation of Information Pertaining to Combinations and Criminal Street Gangs) relating to a criminal street gang or foreign terrorist organization:

(1) makes no changes to this subdivision; and

(2) consist of:

(A) a judgment under any law that includes, as a finding or as an element of a criminal offense, participation in a criminal street gang or foreign terrorist organization;

(B) a self-admission by an individual of membership in a criminal street gang or foreign terrorist organization, rather than criminal street gang membership, that is made during a judicial proceeding; or

(C) except as provided by Subsection (c), any two of the following:

(i) a self-admission by the individual of membership in a criminal street gang or foreign terrorist organization, rather than 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 or foreign terrorist organization;

(ii) an identification of the individual as a member of a criminal street gang or foreign terrorist organization, rather than criminal street gang member, by a reliable informant or other individual;

(iii) a corroborated identification of the individual as a member of a criminal street gang or foreign terrorist organization, rather than criminal street gang member, by an informant or other individual of unknown reliability;

(iv) evidence that the individual frequents a documented area of a criminal street gang or foreign terrorist organization and associates with known members of a criminal street gang or foreign terrorist organization, rather than criminal street gang members;

(v) evidence that the individual uses, in more than an incidental manner, criminal street gang or foreign terrorist organization dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks, regardless of how or the means by which the symbols are displayed, that are associated with a criminal street gang or foreign terrorist organization that operates in an area frequented by the individual and described by Subparagraph (iv);

(vi) evidence that the individual has been arrested or taken into custody with known members of a criminal street gang or foreign terrorist organization, rather than criminal street gang members, for an offense or conduct consistent with gang activity as defined by Section 125.061 (Definitions), Civil Practice and Remedies Code, rather than criminal street activity;

(vii) evidence that the individual has visited a known member of a criminal street gang or foreign terrorist organization, rather than criminal street gang member, other than a family member of the individual, while the member, rather than gang member, is confined in or committed to a penal institution; or

(viii) evidence of the individual's use of technology, including the Internet, to recruit new members of a criminal street gang or foreign terrorist organization, rather than criminal street gang members.

SECTION 12. Amends Articles 67.102(a) and (d), Code of Criminal Procedure, as follows:

(a) Authorizes criminal information relating to a child associated with a combination, criminal street gang, or foreign terrorist organization to be compiled and released under this chapter regardless of the age of the child, notwithstanding Chapter 58 (Records; Juvenile Justice Information System), Family Code. Makes a nonsubstantive change.

(d) Authorizes the governing body of a county or municipality served by a law enforcement agency described by Article 67.051(b) to adopt a policy to notify the parent or guardian of a child of the agency's observations relating to the child's association with a criminal street gang or foreign terrorist organization.

SECTION 13. Amends Article 67.251, Code of Criminal Procedure, as follows:

Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM. Requires the Office of the Attorney General (OAG) to establish an electronic gang resource system to provide criminal justice agencies and juvenile justice agencies with information about criminal street gangs and foreign terrorist organizations in this state.

SECTION 14. Amends Articles 67.252(a) and (b), Code of Criminal Procedure, as follows:

(a) Authorizes the gang resource system established under Article 67.251 to include the following information with regard to any gang or foreign terrorist organization:

(1) gang or organization name;

(2) gang or organization identifiers, such as colors used, tattoos, and clothing preferences; and

(3)-(6) makes no changes to these subdivisions.

(b) Requires that the information in the gang resource system be accessible according to:

(1) makes no changes to this subdivision; and

(2) gang or organization name.

SECTION 15. Amends Article 67.254(a), Code of Criminal Procedure, as follows:

(a) Requires a criminal justice agency or juvenile justice agency to make a reasonable attempt, on request by OAG, to provide gang and foreign terrorist organization information to OAG for the purpose of maintaining an updated, comprehensive gang resource system.

SECTION 16. Amends Article 67.255, Code of Criminal Procedure, as follows:

Art. 67.255. USE OF INFORMATION. Authorizes information in the gang resource system to be used in investigating crimes relating to a criminal street gang or foreign terrorist organization, rather than gang-related crimes.

SECTION 17. Amends Section 557.001, Government Code, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Provides that a person commits an offense if the person knowingly:

(1) commits, attempts to commit, or conspires with one or more persons to commit an act intended to overthrow, destabilize, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force, violence, or a threat of force or violence;

(2) makes no change to this subdivision; and

(3) participates, with knowledge of the nature of the organization, in the management of an organization that engages in or attempts to engage in an act intended to overthrow, destabilize, destroy, or alter the constitutional form of government of this state or of any political subdivision of this state by force or violence.

(b-1) Provides that a conspiracy to commit an offense under Section 557.001 (Sedition), notwithstanding Section 15.02(d) (relating to providing that an offense under Section 15.02 (Criminal Conspiracy) is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor), Penal Code, is punishable in the same manner as an offense under this section.

SECTION 18. Amends Section 71.01, Penal Code, by adding Subsection (e) to define "foreign terrorist organization."

SECTION 19. Amends Section 71.02, Penal Code, as follows:

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (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 criminal street gang or foreign terrorist organization, the person commits or conspires to commit one or more of the following:

(1)-(4) makes no changes to these subdivisions;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug:

(A) creates this paragraph from existing text; or

(B) with the intent to deliver the controlled substance or dangerous drug;

(5-a)-(16) makes no changes to these subdivisions;

(17) any offense under certain sections, including Section 20.07 (Operation of Stash House); or

(18)-(19) makes no changes to these subdivisions.

(b) Provides that an offense under this section, except as provided in Subsections (c), (d), and (e), is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for certain term sentences.

(c) Provides that a conspiracy to commit an offense under this section, notwithstanding Section 15.02(d), is punishable in the same manner as an offense under this section. Deletes existing text providing that conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

(d) Deletes existing text providing that if the defendant is convicted of conspiring to commit the offense, the offense is one category lower than the most serious offense that the defendant conspired to commit.

(e) Provides that an offense that is punishable as a second degree felony or as any lower category of offense under Subsection (b) is one additional category higher than the category listed under Subsection (b) if the person used or exhibited a deadly weapon during the commission of one or more of the offenses listed under Subsection (a) and if an offense is punishable as a Class A misdemeanor under Subsection (b), the offense is a state jail felony.

SECTION 20. Amends the heading to Section 71.022, Penal Code, to read as follows:

Sec. 71.022. COERCING, INDUCING, OR SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG OR FOREIGN TERRORIST ORGANIZATION.

SECTION 21. Amends Sections 71.022(a) and (a-1), Penal Code, as follows:

(a) Provides that a person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang or foreign terrorist organization which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

(a-1) Provides 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 or foreign terrorist organization, the person performs certain actions.

SECTION 22. Amends Section 71.023, Penal Code, as follows:

Sec. 71.023. New heading: DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS OR FOREIGN TERRORIST ORGANIZATIONS. (a) Provides that a person commits an offense if the person, as part of the identifiable leadership of a criminal street gang or foreign terrorist organization, knowingly finances, directs, or supervises the commission of, or a conspiracy to commit, one or more of certain offenses by members of a criminal street gang or foreign terrorist organization.

(b) Makes no changes to this subsection.

SECTION 23. Makes application of Chapter 125 (Common and Public Nuisances), Civil Practice and Remedies Code, as amended by this Act, prospective.

SECTION 24. Makes application of Chapter 71 (Organized Crime), Penal Code, as amended by this Act, prospective.

SECTION 25. Effective date: September 1, 2023.