Chapter 1130

H.B. No. 2086

AN ACT
relating to the prevention, investigation, prosecution, and
punishment for certain gang-related and other criminal offenses,
including engaging in organized criminal activity, and to the
consequences and costs of engaging in certain activities of a
criminal street gang or certain other criminal activity; providing
penalties."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 71.02(a), Penal Code, is amended to read
as follows:

(a) 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,
he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated
robbery, robbery, burglary, theft, aggravated kidnapping,
kidnapping, aggravated assault, aggravated sexual assault, sexual
assault, forgery, deadly conduct, assault punishable as a Class A
misdemeanor, burglary of a motor vehicle, or unauthorized use of a
motor vehicle;

(2) any gambling offense punishable as a Class A
misdemeanor;

(3) promotion of prostitution, aggravated promotion
of prostitution, or compelling prostitution;
(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;
(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;
(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;
(8) any felony offense under Chapter 32;
(9) any offense under Chapter 36;
(10) any offense under Chapter 34 or 35;
(11) any offense under Section 37.11(a);
(12) any offense under Chapter 20A; [XX]
(13) any offense under Section 37.10; or
(14) any offense under Section 38.06, 38.07, 38.09, or

SECTION 2. Section 15.031(e), Penal Code, is amended to read as follows:

(e) 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:

(1) was at the time of the offense 17 years of age or
older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

SECTION 3. Chapter 71, Penal Code, is amended by adding Sections 71.023, 71.028, and 71.029 to read as follows:

Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL STREET GANGS. (a) 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) An offense under this section is a felony of the first degree.

(c) Notwithstanding Section 71.01, in this section, "criminal street gang" means:

(1) an organization that:

(A) has more than 10 members whose names are included in an intelligence database under Chapter 61, Code of Criminal Procedure;

(B) has a hierarchical structure that has been documented in an intelligence database under Chapter 61, Code of Criminal Procedure;
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(C) engages in profit-sharing among two or more
members of the organization; and

(D) in one or more regions of this state served by
different regional councils of government, continuously or
regularly engages in conduct:

(i) that constitutes an offense listed in
Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(ii) in which it is alleged that a deadly
weapon is used or exhibited during the commission of or immediate
flight from the commission of any felony offense; or

(iii) that is punishable as a felony of the
first or second degree under Chapter 481, Health and Safety Code; or

(2) an organization that, in collaboration with an
organization described by Subdivision (1), engages in conduct or
commits an offense or conspires to engage in conduct or commit an
offense described by Subdivision (1)(D).

Sec. 71.028. GANG-FREE ZONES. (a) In this section:

(1) "Institution of higher education," "playground,"
"premises," "school," "video arcade facility," and "youth center"
have the meanings assigned by Section 481.134, Health and Safety
Code.

(2) "Shopping mall" means an enclosed public walkway
or hall area that connects retail, service, or professional
establishments.

(b) This section applies to an offense listed in Section
71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a
motor vehicle, or unauthorized use of a motor vehicle.
(c) Except as provided by Subsection (d), the punishment
prescribed for an offense described by Subsection (b) is increased
to the punishment prescribed for the next highest category of
offense if the actor is 17 years of age or older and it is shown
beyond a reasonable doubt on the trial of the offense that the actor
committed the offense at a location that was:
(1) in, on, or within 1,000 feet of any:
   (A) real property that is owned, rented, or
   leased by a school or school board;
   (B) premises owned, rented, or leased by an
   institution of higher education;
   (C) premises of a public or private youth center;
or
   (D) playground;
(2) in, on, or within 300 feet of any:
   (A) shopping mall;
   (B) movie theater;
   (C) premises of a public swimming pool; or
   (D) premises of a video arcade facility; or
(3) on a school bus.

(d) The punishment for an offense described by Subsection
(b) may not be 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) 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 if
the governing body of 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) A municipal or county engineer may, on request of the
governing body of the municipality or county, revise a map that has
been approved by the governing body of the municipality or county as
provided by Subsection (a).

(c) A municipal or county engineer shall 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) This section does not prevent the prosecution from:

(1) 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

(2) using or introducing any other map or diagram
otherwise admissible under the Texas Rules of Evidence.

SECTION 4. Subchapter D, Chapter 37, Education Code, is
amended by adding Section 37.110 to read as follows:

Sec. 37.110. INFORMATION REGARDING GANG-FREE ZONES. The
superintendent of each public school district and the administrator
of each private elementary or secondary school located in the
public school district shall ensure that the student handbook for
each campus in the public school district includes information on
gang-free zones and the consequences of engaging in organized
criminal activity within those zones.

SECTION 5. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.973 to read as follows:

Sec. 51.973. INFORMATION REGARDING GANG-FREE ZONES. The governing board of each institution of higher education shall ensure that any student handbook or similar publication for the institution includes information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

SECTION 6. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.064 to read as follows:

Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES. Each day-care center shall, in accordance with rules adopted by the executive commissioner, distribute to parents and guardians of children who attend the center information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

SECTION 7. Section 37.110, Education Code, as added by this Act, applies beginning with the public school district's 2009-2010 school year.

SECTION 8. Section 51.973, Education Code, as added by this Act, applies beginning with the 2009 fall semester.

SECTION 9. Section 15.031(e) and Section 71.02(a), Penal Code, as amended by this Act, and Section 71.028, Penal Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the
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offense was committed, and the former law is continued in effect for
that purpose. For purposes of this section, an offense was
committed before the effective date of this Act if any element of
the offense occurred before that date.

SECTION 10. Subchapter D, Chapter 125, Civil Practice and
Remedies Code, is amended by adding Section 125.070 to read as
follows:

Sec. 125.070. CIVIL ACTION FOR VIOLATION OF INJUNCTION.
(a) In this section, "governmental entity" means a political
subdivision of this state, including any city, county, school
district, junior college district, levee improvement district,

12 drainage district, irrigation district, water improvement
district, water control and improvement district, water control and
preservation district, freshwater supply district, navigation
district, conservation and reclamation district, soil conservation
district, communication district, public health district, and
river authority.

(b) 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) In an action brought against a member of a criminal
street gang, the plaintiff must show that the member violated the
temporary or permanent injunctive order.

(d) A district, county, or city attorney or the attorney
general may sue for money damages on behalf of the state or a
governmental entity. If the state or a governmental entity
prevails in a suit under this section, the state or governmental
entity may recover:

(1) actual damages;

(2) a civil penalty in an amount not to exceed $20,000
for each violation; and

(3) court costs and attorney's fees.

(e) The property of the criminal street gang or a member of
the criminal street gang may be seized in execution on a judgment
under this section. Property may not be 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 and did not violate the
temporary or permanent injunctive order. The owner or interest
holder of property that is in the possession of a criminal street
gang or a member of the criminal street gang and that is subject to
execution under this subsection must show that the property:

(1) was stolen from the owner or interest holder; 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 a member of the criminal street gang.

(f) The attorney general shall 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. 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. Money in the fund may be used only for the benefit of the
community or neighborhood harmed by the violation of the injunctive
order. Interest earned on money in the fund shall be credited to
the fund. The attorney general shall 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) A district, county, or city attorney who brings suit on
behalf of a governmental entity shall 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. Money in
the account may be used only for the benefit of the community or
neighborhood harmed by the violation of the injunctive order.
Interest earned on money in the account shall be credited to the
account. The district, county, or city attorney shall 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) An action under this section brought by the state or a
governmental entity does not waive sovereign or governmental
immunity for any purpose.

SECTION 11. 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, is
reenacted and amended to read as follows:
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(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 153, Finance Code;

(iv) any felony under Chapter 34, Penal Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
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   (vi) any felony under Chapter 152, Finance

   (vii) any felony under Chapter 32, Human

Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
involves the state Medicaid program;

   (viii) a Class B misdemeanor under Chapter

522, Business & Commerce Code; [**]

   (ix) a Class A misdemeanor under Section

35.153, Business & Commerce Code; or

   (x) any offense under Chapter 71, Penal

   Code;

   (C) the proceeds gained from the commission of a

   felony listed in Paragraph (A) or (B) of this subdivision, a

   misdemeanor listed in Paragraph (B)(viii) or (x) of this

   subdivision, or a crime of violence;

   (D) acquired with proceeds gained from the

   commission of a felony listed in Paragraph (A) or (B) of this

   subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of

   this subdivision, or a crime of violence; or

   (E) used to facilitate or intended to be used to

   facilitate the commission of a felony under Section 15.031 or

43.25, Penal Code.

SECTION 12. Chapter 59, Code of Criminal Procedure, is
amended by adding Article 59.011 to read as follows:

   Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If

property described by Article 59.01(2)(B)(x) is subject to

forfeiture under this chapter and Article 18.18, the attorney
representing the state may proceed under either this chapter or that article.

SECTION 13. Section 125.070, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 14. 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, apply only to the forfeiture of property used in the commission of an offense committed on or after the effective date of this Act. Forfeiture of property used in the commission of an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 15. Article 42.01, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

Sec. 9. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0197.

SECTION 16. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0197 to read as follows:

Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In
the trial of an offense, on the motion of the attorney representing
the state the judge shall 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, Penal Code.

SECTION 17. Section 11(a), Article 42.12, Code of Criminal
Procedure, is amended to read as follows:

(a) The judge of the court having jurisdiction of the case
shall determine the conditions of community supervision and may, at
any time during the period of community supervision, alter or
modify the conditions. The judge may impose any reasonable
condition that is designed to protect or restore the community,
protect or restore the victim, or punish, rehabilitate, or reform
the defendant. Conditions of community supervision may include,
but shall not be limited to, the conditions that the defendant
shall:

(1) Commit no offense against the laws of this State or
of any other State or of the United States;

(2) Avoid injurious or vicious habits;

(3) Avoid persons or places of disreputable or harmful
color, including any person, other than a family member of the
defendant, who is an active member of a criminal street gang;

(4) Report to the supervision officer as directed by
the judge or supervision officer and obey all rules and regulations
of the community supervision and corrections department;

(5) Permit the supervision officer to visit the
defendant at the defendant's home or elsewhere;
(6) Work faithfully at suitable employment as far as possible;
(7) Remain within a specified place;
(8) Pay the defendant's fine, if one is assessed, and all court costs whether a fine is assessed or not, in one or several sums;
(9) Support the defendant's dependents;
(10) Participate, for a time specified by the judge, in any community-based program, including a community-service work program under Section 16 of this article;
(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending the defendant in the case, if counsel was appointed, or if the defendant was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
(12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of the facility, and pay a percentage of the defendant's income to the facility for room and board;
(13) Pay a percentage of the defendant's income to the defendant's dependents for their support while under custodial supervision in a community corrections facility;
(14) Submit to testing for alcohol or controlled substances;
(15) Attend counseling sessions for substance abusers
or participate in substance abuse treatment services in a program
or facility approved or licensed by the Texas Commission on Alcohol
and Drug Abuse;

(16) With the consent of the victim of a misdemeanor
offense or of any offense under Title 7, Penal Code, participate in
victim-defendant mediation;

(17) Submit to electronic monitoring;

(18) Reimburse the compensation to victims of crime
fund for any amounts paid from that fund to or on behalf of a victim,
as defined by Article 56.32, of the defendant's offense or if no
reimbursement is required, make one payment to the compensation to
victims of crime fund in an amount not to exceed $50 if the offense
is a misdemeanor or not to exceed $100 if the offense is a felony;

(19) Reimburse a law enforcement agency for the
analysis, storage, or disposal of raw materials, controlled
substances, chemical precursors, drug paraphernalia, or other
materials seized in connection with the offense;

(20) Pay all or part of the reasonable and necessary
costs incurred by the victim for psychological counseling made
necessary by the offense or for counseling and education relating
to acquired immune deficiency syndrome or human immunodeficiency
virus made necessary by the offense;

(21) Make one payment in an amount not to exceed $50 to
a crime stoppers organization as defined by Section 414.001,
Government Code, and as certified by the Crime Stoppers Advisory
Council;

(22) Submit a DNA sample to the Department of Public
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1 Safety under Subchapter G, Chapter 411, Government Code, for the
2 purpose of creating a DNA record of the defendant;
3   (23) In any manner required by the judge, provide
4 public notice of the offense for which the defendant was placed on
5 community supervision in the county in which the offense was
6 committed; and
7   (24) Reimburse the county in which the prosecution was
8 instituted for compensation paid to any interpreter in the case.
9
10 SECTION 18. Article 42.12, Code of Criminal Procedure, is
11 amended by adding Sections 13E and 13F to read as follows:
12
13 Sec. 13E. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF
14 CRIMINAL STREET GANG WHO ARE PLACED ON COMMUNITY SUPERVISION. (a)
15 This section applies only to a defendant who:
16   (1) is identified as a member of a criminal street gang
17 in an intelligence database established under Chapter 61; and
18   (2) has two or more times been previously convicted
19 of, or received a grant of deferred adjudication community
20 supervision or another functionally equivalent form of community
21 supervision or probation for, a felony offense under the laws of
22 this state, another state, or the United States.
23   (b) A court granting community supervision to a defendant
24 described by Subsection (a) may, on the defendant's conviction of a
25 felony offense, require as a condition of community supervision
26 that the defendant submit to tracking under an electronic
27 monitoring service or other appropriate technological service
28 designed to track a person's location.
29
30 Sec. 13F. RESTRICTIONS ON OPERATION OF MOTOR VEHICLE FOR
DEFENDANTS CONVICTED OF CERTAIN ORGANIZED CRIME OFFENSES. A court
granting community supervision to a defendant convicted of an
offense under Chapter 71, Penal Code, may impose as a condition of
community supervision restrictions on the defendant's operation of
a motor vehicle, including specifying:

(1) hours during which the defendant may not operate a
motor vehicle; and

(2) locations at or in which the defendant may not
operate a motor vehicle.

SECTION 19. Chapter 54, Family Code, is amended by adding
Section 54.0491 to read as follows:

Sec. 54.0491. GANG-RELATED CONDUCT. (a) In this section:

(1) "Criminal street gang" has the meaning assigned by
Section 71.01, Penal Code.

(2) "Gang-related conduct" means conduct that
violates a penal law of the grade of Class B misdemeanor or higher
and in which a child engages with the intent to:

(A) further the criminal activities of a criminal
street gang of which the child is a member;

(B) gain membership in a criminal street gang; or

(C) avoid detection as a member of a criminal
street gang.

(b) A juvenile court, in a disposition hearing under Section
54.04 regarding a child who has been adjudicated to have engaged in
delinquent conduct that is also gang-related conduct, shall 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. The intervention program:

(1) must include at least 12 hours of instruction; and
(2) may include voluntary tattoo removal.
(c) If a child required to attend a criminal street gang
intervention program is committed to the Texas Youth Commission as
a result of the gang-related conduct, the child must complete the
intervention program before being discharged from the custody of or
released under supervision by the commission.

SECTION 20. Subchapter G, Chapter 508, Government Code, is
amended by adding Section 508.227 to read as follows:

Sec. 508.227. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF
CRIMINAL STREET GANG. (a) This section applies only to a releasee
who:

(1) is identified as a member of a criminal street gang
in an intelligence database established under Chapter 61, Code of
Criminal Procedure; and
(2) 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) A parole panel may 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 service designed to
track a person's location.
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SECTION 21. Section 3.03, Penal Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless
of whether the accused is charged with violations of the same
section more than once or is charged with violations of more than
one section; [**]

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of
whether the accused is convicted of violations of the same section
more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a
case in which the accused was charged with more than one offense
listed in Paragraph (A), regardless of whether the accused is
charged with violations of the same section more than once or is
charged with violations of both sections; or

(4) an offense for which the judgment in the case
contains an affirmative finding under Article 42.0197, Code of
Criminal Procedure.

(b-1) Subsection (b)(4) does not apply to a defendant whose
case was transferred to the court under Section 54.02, Family Code.

SECTION 22. 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 23. Section 11(a), Article 42.12, Code of Criminal
Procedure, as amended by this Act, and Sections 13E and 13F, Article
42.12, Code of Criminal Procedure, as added by this Act, apply only
to a person who is placed on community supervision for an offense
committed on or after the effective date of this Act. A person who
is placed on community supervision for an offense committed before
the effective date of this Act is governed by the law in effect on
the date the offense was committed, and the former law is continued
in effect for that purpose. For purposes of this section, an
offense was committed before the effective date of this Act if any
element of the offense occurred before that date.

SECTION 24. Section 54.0491, Family Code, as added by this
Act, applies only to conduct that violates a penal law of this state
and that occurs on or after the effective date of this Act. Conduct
that violates a penal law of this state and that occurs before the
effective date of this Act is covered by the law in effect at the
time the conduct occurred, and the former law is continued in effect
for that purpose. For purposes of this section, conduct occurs
before the effective date of this Act if each element of the
violation occurred before that date.

SECTION 25. Section 508.227, Government Code, as added by
this Act, applies only to a person released on parole or to
mandatory supervision for an offense committed on or after the
effective date of this Act. A person released on parole or to
mandatory supervision for an offense committed before the effective
date of this Act is governed by the law in effect on the date the
offense was committed, and the former law is continued in effect for
that purpose. For purposes of this section, an offense was
committed before the effective date of this Act if any element of
the offense occurred before that date.

SECTION 26. Section 3.03(b), Penal Code, as amended by this
Act, applies only to an offense committed on or after the effective
date of this Act. An offense committed before the effective date of
this Act is covered by the law in effect when the offense was
committed, and the former law is continued in effect for that
purpose. For purposes of this section, an offense was committed
before the effective date of this Act if any element of the offense
occurred before that date.

SECTION 27. Subchapter C, Chapter 101, Civil Practice and
Remedies Code, is amended by adding Section 101.067 to read as
follows:

Sec. 101.067. GRAFFITI REMOVAL. This chapter does not
apply to a claim for property damage caused by the removal of
graffiti under Section 250.006, Local Government Code.

SECTION 28. Section 485.018(a), Health and Safety Code, is
amended to read as follows:

(a) A political subdivision or an agency of this state may
not enact 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 29. Chapter 250, Local Government Code, is amended
by adding Section 250.006 to read as follows:

Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by
Subsection (h), a county by order or a municipality by ordinance may
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) The order or ordinance must provide that a county or
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municipality may not give notice to a property owner under Subsection (a) unless:

(1) the county or municipality has offered to remove the graffiti from the owner's property free of charge; and

(2) the property owner has refused the offer.

(c) The order or ordinance must require a property owner to remove the graffiti on or before the 15th day after the date the property owner receives notice under Subsection (a). If the property owner fails to remove the graffiti on or before the 15th 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.

(d) The notice required by Subsection (a) must 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):

(A) by publication at least once in a newspaper of general circulation in the county or municipality;

(B) by posting the notice on or near the front door of each building on the property to which the notice relates;

or

(C) by posting the notice on a placard attached
to a stake driven into the ground on the property to which the
notice relates.

(e) The county or municipality may assess expenses incurred
under Subsection (c) against the property on which the work is
performed to remove the graffiti.

(f) To obtain a lien against the property for expenses
incurred under Subsection (c), the governing body of the county or
municipality must file a statement of expenses with the county
clerk. The statement of expenses must contain:

   (1) the name of the property owner, if known;
   (2) the legal description of the property; and
   (3) the amount of expenses incurred under Subsection
   (c).

(g) A lien described by Subsection (f) 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:

   (1) any previously recorded lien; and
   (2) 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 (f).

(h) An order or ordinance described by this section must
include an exception from the requirement that an owner of property
remove graffiti from the owner's property if:

   (1) the graffiti is located on transportation
   infrastructure; and
   (2) the removal of the graffiti would create a hazard
for the person performing the removal.

SECTION 30. Section 101.067, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 31. Section 37.10, Penal Code, is amended by adding Subsection (j) to read as follows:

(j) It is not a defense to prosecution under Subsection (a)(2) 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 32. Section 521.454, Transportation Code, is amended by adding Subsection (d) to read as follows:

(d) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 33. Section 521.455, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be
prosecuted under this section, the other law, or both.

SECTION 34. Section 521.456, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

SECTION 35. Section 37.10(j), Penal Code, and Sections 521.454(d), 521.455(c), and 521.456(e), Transportation Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 36. Article 61.02, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) Criminal information collected under this chapter relating to a criminal street gang must:

(1) be relevant to the identification of an organization that is reasonably suspected of involvement in criminal activity; 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;
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(B) a self-admission by the individual of criminal street gang membership that is made during a judicial proceeding; or

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

(i) 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;

(ii) an identification of the individual as a criminal street gang member by a reliable informant or other individual;

(iii) a corroborated identification of the individual as a 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 and associates with known criminal street gang members;

(v) 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 [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);
(vi) evidence that the individual has been
arrested or taken into custody with known criminal street gang
members for an offense or conduct consistent with criminal street
gang activity;

(vii) 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

(viii) evidence of the individual's use of
technology, including the Internet, to recruit new criminal street
gang members.

(d) Evidence described by Subsections (c)(2)(C)(iv) and
(vii) 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).

(e) In this article:

(1) "Family member" means a person related to another
person within the third degree by consanguinity or affinity, as
described by Subchapter B, Chapter 573, Government Code, except
that the term does not include a person who is considered to be
related to another person by affinity only as described by Section
573.024(b), Government Code.

(2) "Penal institution" means a confinement facility
operated by or under a contract with any division of the Texas
Department of Criminal Justice, a confinement facility operated by
or under contract with the Texas Youth Commission, or a juvenile
secure pre-adjudication or post-adjudication facility operated by
or under a local juvenile probation department, or a county jail.

SECTION 37. Article 61.06(b), Code of Criminal Procedure,
is amended to read as follows:

(b) Subject to Subsection (c), information collected under
this chapter relating to a criminal street gang must be removed from
an intelligence database established under Article 61.02 and the
intelligence database maintained by the department under Article
61.03 after five [three] years if:

(1) the information relates to the investigation or
prosecution of criminal activity engaged in by an individual other
than a child; and

(2) the individual who is the subject of the
information has not been arrested for criminal activity reported to
the department under Chapter 60.

SECTION 38. Article 61.06(c), Code of Criminal Procedure,
as amended by Chapters 258 (S.B. 11), 263 (S.B. 103), and 1308 (S.B.
909), Acts of the 80th Legislature, Regular Session, 2007, is
reenacted and amended to read as follows:

(c) In determining whether information is required to be
removed from an intelligence database under Subsection (b), the
five-year [three-year] period does not include any period during
which the individual who is the subject of the information is:

(1) confined in a correctional facility operated by or
under contract with the Texas Department of Criminal Justice;

(2) committed to a secure correctional facility
operated by or under contract with the Texas Youth Commission, as
defined by Section 51.02, Family Code; or

(3) confined in a county jail or confined in or committed to a facility operated by a juvenile board in lieu of being confined in a correctional facility operated by or under contract with the Texas Department of Criminal Justice or being committed to a secure correctional facility operated by or under contract with the Texas Youth Commission.

SECTION 39. 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.

SECTION 40. Article 18.20, Code of Criminal Procedure, is amended by adding Section 9A to read as follows:

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) The requirements of Sections 8(a)(2)(B) and 9(b)(2) 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:

(A) 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

(B) 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:
(A) the application identifies the person committing or believed to be committing the offense and whose communications are to be intercepted;

(B) 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

(C) 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) 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 may begin interception only after the person ascertains the place where the communication is to be intercepted.

(c) 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 may 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. On notice to the state, the court shall decide
the motion expeditiously.

SECTION 41. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0207 to read as follows:

Sec. 411.0207. PUBLIC CORRUPTION UNIT. (a) In this section, "organized criminal activity" means conduct that constitutes an offense under Section 71.02, Penal Code.

(b) A public corruption unit is created within the department to investigate and assist in the management of allegations of participation in organized criminal activity by:

(1) 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; or

(2) a federal law enforcement officer while performing duties in this state.

(c) The unit shall:

(1) assist district attorneys and county attorneys in the investigation and prosecution of allegations described by Subsection (b);

(2) if requested by the agency, assist a state or local law enforcement agency with the investigation of such allegations against law enforcement officers in the agency;

(3) assist the United States Department of Justice or any other appropriate federal department or agency in the investigation and prosecution of allegations described by Subsection (b);

(4) if requested by the agency, assist a federal law enforcement agency with the investigation of such allegations
against law enforcement officers in the agency;

(5) serve as a clearinghouse for information relating to the investigation and prosecution of allegations described by Subsection (b); and

(6) report to the highest-ranking officer of the Texas Rangers division of the department.

(d) On written approval of the director or of the chair of the commission, the highest-ranking officer of the Texas Rangers division of the department may initiate an investigation of an allegation of participation in organized criminal activity by a law enforcement officer described by Subsection (b)(1). Written approval under this subsection must be based on cause.

(e) To the extent allowed by law, a state or local law enforcement agency shall cooperate with the public corruption unit by providing information requested by the unit as necessary to carry out the purposes of this section. Information described by this subsection is excepted from required disclosure under Chapter 552 in the manner provided by Section 552.108.

SECTION 42. Chapter 772, Government Code, is amended by adding Section 772.007 to read as follows:

Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM. (a) The criminal justice division established under Section 772.006 shall administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities.

(b) The grant program administered under this section must
be directed toward regions of this state that have demonstrably high levels of gang violence.

(c) The criminal justice division shall award grants to qualified applicants, as determined by the division, that demonstrate a comprehensive approach that balances gang prevention, intervention, and suppression activities to reduce gang violence.

(d) The criminal justice division shall include in the biennial report required by Section 772.006(a)(9) detailed reporting of the results and performance of the grant program administered under this section.

(e) The criminal justice division may use any revenue available for purposes of this section.

SECTION 43. 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. 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 44. Not later than December 1, 2010, the Department of Public Safety shall establish the public corruption unit under Section 411.0207, Government Code, as added by this Act.

SECTION 45. 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
SEC. 46. (a) The Legislative Budget Board shall prepare an annual criminal justice policy impact statement for this Act.

(b) The impact statement must include information concerning:

(1) the number of arrests and resulting criminal dispositions under this Act;

(2) the fiscal impact of arrests, trials, convictions, and imprisoning or imposing other sanctions on persons in accordance with this Act;

(3) the race and ethnicity of persons arrested, prosecuted, convicted, and incarcerated under this Act;

(4) the impact of this Act on existing correctional facilities, as defined by Section 1.07, Penal Code;

(5) the likelihood that this Act may create a need for additional prison capacity;

(6) civil action damages assessed and collected, and assets seized and forfeited under this Act; and

(7) any other matter the Legislative Budget Board determines relevant.

(c) The Legislative Budget Board shall complete the impact statement not later than December 1 each year, beginning December 1, 2010, and make it available to the public on its website.

SEC. 47. (a) Except as provided by Subsection (b), this Act takes effect September 1, 2009.

(b) Sections 37.110 and 51.973, Education Code, and Section 42.064, Human Resources Code, as added by this Act, take effect
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1 immediately if this Act receives a vote of two-thirds of all the
2 members elected to each house, as provided by Section 39, Article
3 III, Texas Constitution. If this Act does not receive the vote
4 necessary for immediate effect, those sections of the Education
5 Code and Human Resources Code take effect September 1, 2009.
President of the Senate

I certify that H.B. No. 2086 was passed by the House on April 24, 2009, by the following vote: Yeas 140, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2086 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2086 on May 31, 2009, by the following vote: Yeas 142, Nays 1, 1 present, not voting.

Speaker of the House

Chief Clerk of the House
H.B. No. 2086

I certify that H.B. No. 2086 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2086 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

[Signature]
Secretary of the Senate

APPROVED: 19 JUN '09

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2009 0'O'CLOCK
JUN 19 2009

Coley Shiotz III