

BILL ANALYSIS

Senate Research Center

H.B. 3225
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Criminal Justice
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Engrossed

DIGEST

Currently, the destruction and fear caused by today's street gangs has elevated the importance of effective criminal justice responses to them. As of 1995, 14 states are working under recently enacted legislation directed toward street gangs, and numerous other states have enacted similar laws since then. This legislation aims to expand the legal options available to prosecutors to combat gangs by expanding criminal solicitation of a child to mean an offense committed with the intent that a felony be committed; expanding the definition of "criminal instrument" to include something that in the manner of its use is *capable* of committing a crime (thus including commonly used tools like ball bearings); adding various methods of electronic surveillance to the list of offenses which may be prosecuted under organized crime; expanding the organized crime statute to include certain felony firearm offenses such as unlawfully carrying weapons into schools and bars; removing the current prohibition that restricts the ability of local agencies to input and extract criminal street gang data from Department of Public Safety records; and clarifying record retention law to include longer maintenance of records on gang members.

PURPOSE

As proposed, H.B. 3225 establishes law enforcement provisions for offenses under the Penal Code commonly associated with criminal street gang activity, and make other substantive changes and technical corrections in the Penal Code.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 8.07(a), Penal Code, to prohibit a person from being prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except a violation punishable as a felony under Section 71.02, regarding engaging in organized criminal activity. Deletes the provision barring the same for a violation of a penal statute cognizable under Article 67011-4, V.T.C.S.; a violation of certain motor vehicle traffic ordinances; or a violation of a penal ordinance of a political subdivision. Makes conforming changes.

SECTION 2. Amends Section 12.03, Penal Code, by adding Subsection (d), to provide that an offense that is punishable one category lower than a state jail felony is a Class A misdemeanor.

SECTION 3. Amends Section 12.04, Penal Code, by adding Subsection (c), to provide that an offense punishable one category higher than a Class A misdemeanor is a state jail felony.

SECTION 4. Amends Section 15.01(d), Penal Code, to make a conforming change.

SECTION 5. Amends Section 15.02(d), Penal Code, to make a conforming change.

SECTION 6. Amends Section 15.03(d), Penal Code, to provide that an offense under this section is one category lower than the offense solicited, rather than being a felony, either of the first or second degree.

SECTION 7. Amends Section 15.031, Penal Code, as follows:

Sec. 15.031. CRIMINAL SOLICITATION OF A CHILD. Provides that a person commits an offense if, with intent that a felony, rather than a certain offense, be committed, the person requests, commands, or attempts to induce a child, rather than a minor, to engage in specific conduct that would constitute the felony or make the minor a party to the commission of the felony. Makes conforming changes.

SECTION 8. Amends Sections 15.04(b) and (d), Penal Code, to provide that it is an affirmative defense to prosecution under Section 15.031 that under circumstances manifesting a voluntary and complete renunciation of a criminal objective, the actor countermanded or withdrew from the conspiracy before committing the object offense and took further affirmative action that prevented commission of that offense. Authorizes the defendant, at the punishment stage of a trial resulting in a conviction for an offense that was an object of a preparatory offense, to raise the issue of whether in voluntary and complete renunciation of the preparatory and object offenses the defendant abandoned the defendant's criminal conduct, withdrew from the conspiracy, or countermanded defendant's solicitation before the object offense was committed and made substantial effort to prevent the commission of the object offense. Requires the punishment, if the defendant proves the issue in the affirmative by a preponderance of the evidence, to be one category lower. Deletes existing text regarding the admissibility of certain evidence as mitigation at a hearing on punishment. Makes conforming changes.

SECTION 9. Amends Section 15.05, Penal Code, to provide that criminal attempt of a misdemeanor punishable by fine only is not an offense.

SECTION 10. Amends Chapter 16, Penal Code, as follows:

CHAPTER 16. New heading; CRIMINAL INSTRUMENTS AND ELECTRONIC SURVEILLANCE

SUBCHAPTER A. CRIMINAL INSTRUMENTS

Sec. 16.01. DEFINITIONS. Defines "criminal instrument."

Sec. 16.011. New heading: POSSESSION OF CRIMINAL INSTRUMENT. Deletes existing text regarding unlawful use of a criminal instrument. Deletes the definition of "criminal instrument." Provides that an offense under this section is one category lower than the most serious offense, rather than the offense, intended. Makes conforming changes.

Sec. 16.012. MAKING OR USING CRIMINAL INSTRUMENT. Provides that a person commits a state jail felony if the person makes, manufactures, adapts, sells, installs, or uses a criminal instrument with certain knowledge and intent. Makes a conforming change.

Sec. 16.013. PROSECUTION UNDER OTHER STATUTES. Authorizes a person whose conduct violates this subchapter and another offense described by penal statute to be prosecuted under either statute or both statutes.

SUBCHAPTER B. ELECTRONIC SURVEILLANCE

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. Defines "covert entry," "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," "electronic communication," "readily accessible to the general public," and "wire communication." Provides that a person commits an offense if the person intentionally intercepts or procures another person to intercept a wire, oral, or electronic communication; discloses to another person the contents of a wire, oral, or electronic communication obtained illegally; uses the contents of such illegal communication; effects a covert entry to illegally intercept such a communication; or uses or procures any other person to use certain electronic, mechanical,

or other device to intercept any oral communication. Sets forth the evidence constituting an affirmative defense to prosecution under Subsection (b). Provides that a person commits a state jail felony if the person intentionally manufactures, assembles, possesses, or sells an electronic, mechanical, or other device with knowledge that the device is designed for an illegal purpose; or places in a newspaper, magazine, handbill, or other publication an advertisement of an electronic, mechanical, or other device with knowledge that the device is designed for an unlawful purpose. Sets forth the evidence constituting an affirmative defense to prosecution under Subsection (d). Provides that except as provided by Subsections (d) and (h), an offense under this section is a second degree felony. Defines an immediate life-threatening situation and "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations." Establishes the terms under which a person commits a state jail felony if the person obstructs, impedes, prevents, or gives notice to another person of impending governmental interception of wire, electronic, or oral communications. Provides that this section expires September 1, 2005.

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. Provides that a person commits a state jail felony if the person knowingly installs or utilizes a pen register or trap and trace device to record telephone numbers dialed from or to a telephone instrument, with certain exceptions. Defines "authorized peace officer," "communications common carrier," "pen register," and "trap and trace device."

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. Defines "electronic communication," "electronic storage," "user," and "wire communication." Provides that a person commits a Class A misdemeanor if the person obtains, alters, or prevents authorized access to a wire or electronic communications while the communication is in electronic storage by intentionally obtaining access without authorization to a facility through which a wire or electronic communications service is provided, or exceeding an authorization for access to a facility through which a communications service is provided. Provides that if committed to obtain a benefit or to harm another, such an offense is a state jail felony. Provides an exception to the application of Subsection (b).

Sec. 16.05. ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS. Defines "electronic communication," "electronic communications service," and "electronic communications system." Establishes that except as provided by Subsection (c), a person who provides electronic communications service to the public commits a state jail felony if the person divulges the contents of certain communications to certain persons. Sets forth the terms by which a person who provides electronic communications service to the public is authorized to divulge the contents of a communication. Provides that if committed for a tortious or illegal purpose or to gain a benefit, an offense under Subsection (b) that involves a radio communication that is not scrambled or encrypted is either a Class A or a Class C misdemeanor, depending on the circumstances. Sets forth the conditions under which a person who engages in conduct constituting an offense under Subsection (b) that is not for a tortious or illegal purpose or for the purpose of commercial advantage or gain and involves certain radio communications is required to be subject to suit for injunctive relief and by which the court is required to impose a civil penalty.

SECTION 11. Amends Section 71.02(a), Penal Code, to provide that a person commits an offense if, with 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, the person commits or conspires to commit indecency with a child; injury to a child, elderly individual, or disabled individual; tampering with a consumer product; sale or purchase of a child; escape; obstruction or retaliation; criminal mischief punishable as a felony or as a serious misdemeanor; tampering with an identification number, credit card, or debit card abuse; assault punishable as a Class A misdemeanor or a felony; burglary of a vehicle, rather than a motor vehicle; unlawful possession of a firearm punishable as a felony; unlawful possession of a prohibited weapon; unlawful wholesale promotion or possession with intent to wholesale promote child pornography; any unlawful employment, authorization, or inducing of a child younger than 17 years of age to engage in sexual conduct; and any offense under Chapters 33-35, Penal Code. Makes conforming changes.

SECTION 12. Amends Section 71.02(b), Penal Code, as amended by Chapters 761 and 900, Acts of the 73rd Legislature, Regular Session, 1993, to delete existing text regarding the classification of an offense under this section.

SECTION 13. Amends Section 71.02(c), Penal Code, as amended by Chapters 761 and 900, Acts of the 73rd Legislature, Regular Session, 1993, by reenacting, to make conforming changes.

SECTION 14. Amends Section 71.05(a), Penal Code, as amended by Chapters 761 and 900, Acts of the 73rd Legislature, Regular Session, 1993, by reenacting, to delete existing text regarding an affirmative defense to prosecution under Section 71.02 of this code.

SECTION 15. Amends Article 61.06, Code of Criminal Procedure, to set forth the terms by which information collected on an individual is required to be destroyed.

SECTION 16. Amends Section 503.029(a), Transportation Code, to require an applicant for an original or renewal dealer general distinguishing number to submit a written application on a form that states that the applicant agrees to allow the Texas Department of Transportation or a peace officer to examine certain ownership papers.

SECTION 17. Makes application of this Act prospective, except for the nonsubstantive changes made by SECTIONS 15-17 of this Act.

SECTION 18. Effective date: September 1, 1997.

SECTION 19. Emergency clause.