

BILL ANALYSIS

Senate Research Center
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S.B. 1256
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Gangs pose a dangerous threat to Texas communities, especially in areas that are frequented by youth. To combat this threat, law enforcement and criminal prosecutors need additional tools to deter illegal activities by gangs in those areas.

This bill creates "gang-free zones," which are patterned after "drug-free zones" created under Chapter 481.134 (Drug-Free Zones), Health and Safety Code. That statute provides for penalty enhancements for certain drug-related offenses committed in a drug-free zone. Gang-free zones are defined as areas within certain distances of school property, higher education property, youth centers, playgrounds, shopping malls, movie theaters, public pools, video arcades, and school buses.

Currently, Chapter 71 (Organized Crime), Penal Code, provides for a penalty enhancement of one increment where it can be proven that a person committed one of a list of specific crimes while acting as a member of a criminal street gang. This specific list of crimes can be found in Section 71.02 (Engaging in Organized Criminal Activity), Penal Code.

As proposed, S.B. 1256 enhances penalties by one increment for crimes committed in "gang-free zones." S.B. 1256 also adds Section 71.028 (Gang-Free Zones) to the Penal Code, which states that, where an offense listed under 71.02, Penal Code, is committed by a criminal street gang in a "gang-free zone," the penalty for the offense is increased by a second increment.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 71, Penal Code, by adding Sections 71.028 and 71.029, as follows:

Sec. 71.028. GANG-FREE ZONES. (a) Defines "institution of higher education," "playground," "premises," "school," "video arcade facility," "youth center," and "shopping mall."

(b) Provides that, except as provided by Subsection (c), the punishment prescribed for an offense under Section 71.02 (Engaging in Organized Criminal Activity) is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was in, on, or within 1,000 feet of certain school property, a shopping mall, movie theater, public or private youth center, or playground, or in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility, or on a school bus.

(c) Prohibits the punishment prescribed for an offense under Section 71.02 from being increased under this section if the offense is punishable under Section 71.02 as a felony of the first degree.

(d) Prohibits punishment that is prescribed for an offense under Section 71.02 and increased in accordance with this section from running concurrently with punishment for conviction of an offense under any other criminal statute.

Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) Provides that, 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) Authorizes a municipal or county engineer, on request of the governing body of the municipality or county, to revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) Requires a municipal or county engineer to 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) Provides that this section does not prevent the prosecution from 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 using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.