

AN ACT

1  
2 relating to the prevention, investigation, prosecution, and  
3 punishment for certain gang-related and other criminal offenses,  
4 including engaging in organized criminal activity, and to the  
5 consequences and costs of engaging in certain activities of a  
6 criminal street gang or certain other criminal activity; providing  
7 penalties.

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

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

11 (a) A person commits an offense if, with the intent to  
12 establish, maintain, or participate in a combination or in the  
13 profits of a combination or as a member of a criminal street gang,  
14 he commits or conspires to commit one or more of the following:

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

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

23 (3) promotion of prostitution, aggravated promotion  
24 of prostitution, or compelling prostitution;

1           (4) unlawful manufacture, transportation, repair, or  
2 sale of firearms or prohibited weapons;

3           (5) unlawful manufacture, delivery, dispensation, or  
4 distribution of a controlled substance or dangerous drug, or  
5 unlawful possession of a controlled substance or dangerous drug  
6 through forgery, fraud, misrepresentation, or deception;

7           (6) any unlawful wholesale promotion or possession of  
8 any obscene material or obscene device with the intent to wholesale  
9 promote the same;

10          (7) any offense under Subchapter B, Chapter 43,  
11 depicting or involving conduct by or directed toward a child  
12 younger than 18 years of age;

13           (8) any felony offense under Chapter 32;

14           (9) any offense under Chapter 36;

15           (10) any offense under Chapter 34 or 35;

16           (11) any offense under Section 37.11(a);

17           (12) any offense under Chapter 20A; ~~[or]~~

18           (13) any offense under Section 37.10; or

19           (14) any offense under Section 38.06, 38.07, 38.09, or  
20 38.11.

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

23          (e) An offense under this section is one category lower than  
24 the solicited offense, except that an offense under this section is  
25 the same category as the solicited offense if it is shown on the  
26 trial of the offense that the actor:

27           (1) was at the time of the offense 17 years of age or

1 older and a member of a criminal street gang, as defined by Section  
2 71.01; and

3 (2) committed the offense with the intent to:

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

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

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

10 Sec. 71.023. DIRECTING ACTIVITIES OF CERTAIN CRIMINAL  
11 STREET GANGS. (a) A person commits an offense if the person  
12 knowingly initiates, organizes, plans, finances, directs, manages,  
13 or supervises a criminal street gang or members of a criminal street  
14 gang with the intent to benefit, promote, or further the interests  
15 of the criminal street gang or to increase the person's standing,  
16 position, or status in the criminal street gang.

17 (b) An offense under this section is a felony of the first  
18 degree.

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

21 (1) an organization that:

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

25 (B) has a hierarchical structure that has been  
26 documented in an intelligence database under Chapter 61, Code of  
27 Criminal Procedure;

1           (C) engages in profit-sharing among two or more  
2 members of the organization; and

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

6                   (i) that constitutes an offense listed in  
7 Section 39(a)(1), Article 42.12, Code of Criminal Procedure;

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

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

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

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

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

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

25                   (b) This section applies to an offense listed in Section  
26 71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a  
27 motor vehicle, or unauthorized use of a motor vehicle.

1       (c) Except as provided by Subsection (d), the punishment  
2 prescribed for an offense described by Subsection (b) is increased  
3 to the punishment prescribed for the next highest category of  
4 offense if the actor is 17 years of age or older and it is shown  
5 beyond a reasonable doubt on the trial of the offense that the actor  
6 committed the offense at a location that was:

7           (1) in, on, or within 1,000 feet of any:

8                   (A) real property that is owned, rented, or  
9 leased by a school or school board;

10                   (B) premises owned, rented, or leased by an  
11 institution of higher education;

12                   (C) premises of a public or private youth center;

13 or

14                   (D) playground;

15           (2) in, on, or within 300 feet of any:

16                   (A) shopping mall;

17                   (B) movie theater;

18                   (C) premises of a public swimming pool; or

19                   (D) premises of a video arcade facility; or

20           (3) on a school bus.

21       (d) The punishment for an offense described by Subsection  
22 (b) may not be increased under this section if the offense is  
23 punishable under Section 71.02 as a felony of the first degree.

24       Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a  
25 prosecution of an offense for which punishment is increased under  
26 Section 71.028, a map produced or reproduced by a municipal or  
27 county engineer for the purpose of showing the location and

1 boundaries of gang-free zones is admissible in evidence and is  
2 prima facie evidence of the location or boundaries of those zones if  
3 the governing body of the municipality or county adopts a  
4 resolution or ordinance approving the map as an official finding  
5 and record of the location or boundaries of those zones.

6 (b) A municipal or county engineer may, on request of the  
7 governing body of the municipality or county, revise a map that has  
8 been approved by the governing body of the municipality or county as  
9 provided by Subsection (a).

10 (c) A municipal or county engineer shall file the original  
11 or a copy of every approved or revised map approved as provided by  
12 Subsection (a) with the county clerk of each county in which the  
13 zone is located.

14 (d) This section does not prevent the prosecution from:

15 (1) introducing or relying on any other evidence or  
16 testimony to establish any element of an offense for which  
17 punishment is increased under Section 71.028; or

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

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

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

1 criminal activity within those zones.

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

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

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

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

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

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

23 SECTION 9. Section 15.031(e) and Section 71.02(a), Penal  
24 Code, as amended by this Act, and Section 71.028, Penal Code, as  
25 added by this Act, apply only to an offense committed on or after  
26 the effective date of this Act. An offense committed before the  
27 effective date of this Act is covered by the law in effect when the

1 offense was committed, and the former law is continued in effect for  
2 that purpose. For purposes of this section, an offense was  
3 committed before the effective date of this Act if any element of  
4 the offense occurred before that date.

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

8 Sec. 125.070. CIVIL ACTION FOR VIOLATION OF INJUNCTION.

9 (a) In this section, "governmental entity" means a political  
10 subdivision of this state, including any city, county, school  
11 district, junior college district, levee improvement district,  
12 drainage district, irrigation district, water improvement  
13 district, water control and improvement district, water control and  
14 preservation district, freshwater supply district, navigation  
15 district, conservation and reclamation district, soil conservation  
16 district, communication district, public health district, and  
17 river authority.

18 (b) A criminal street gang or a member of a criminal street  
19 gang is liable to the state or a governmental entity injured by the  
20 violation of a temporary or permanent injunctive order under this  
21 subchapter.

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

25 (d) A district, county, or city attorney or the attorney  
26 general may sue for money damages on behalf of the state or a  
27 governmental entity. If the state or a governmental entity

1 prevails in a suit under this section, the state or governmental  
2 entity may recover:

- 3           (1) actual damages;  
4           (2) a civil penalty in an amount not to exceed \$20,000  
5 for each violation; and  
6           (3) court costs and attorney's fees.

7           (e) The property of the criminal street gang or a member of  
8 the criminal street gang may be seized in execution on a judgment  
9 under this section. Property may not be seized under this  
10 subsection if the owner or interest holder of the property proves by  
11 a preponderance of the evidence that the owner or interest holder  
12 was not a member of the criminal street gang and did not violate the  
13 temporary or permanent injunctive order. The owner or interest  
14 holder of property that is in the possession of a criminal street  
15 gang or a member of the criminal street gang and that is subject to  
16 execution under this subsection must show that the property:

- 17           (1) was stolen from the owner or interest holder; or  
18           (2) was used or intended to be used without the  
19 effective consent of the owner or interest holder by the criminal  
20 street gang or a member of the criminal street gang.

21           (f) The attorney general shall deposit money received under  
22 this section for damages or as a civil penalty in the neighborhood  
23 and community recovery fund held by the attorney general outside  
24 the state treasury. Money in the fund is held by the attorney  
25 general in trust for the benefit of the community or neighborhood  
26 harmed by the violation of a temporary or permanent injunctive  
27 order. Money in the fund may be used only for the benefit of the

1 community or neighborhood harmed by the violation of the injunctive  
2 order. Interest earned on money in the fund shall be credited to  
3 the fund. The attorney general shall account for money in the fund  
4 so that money held for the benefit of a community or neighborhood,  
5 and interest earned on that money, are not commingled with money in  
6 the fund held for the benefit of a different community or  
7 neighborhood.

8 (g) A district, county, or city attorney who brings suit on  
9 behalf of a governmental entity shall deposit money received for  
10 damages or as a civil penalty in an account to be held in trust for  
11 the benefit of the community or neighborhood harmed by the  
12 violation of a temporary or permanent injunctive order. Money in  
13 the account may be used only for the benefit of the community or  
14 neighborhood harmed by the violation of the injunctive order.  
15 Interest earned on money in the account shall be credited to the  
16 account. The district, county, or city attorney shall account for  
17 money in the account so that money held for the benefit of a  
18 community or neighborhood, and interest earned on that money, are  
19 not commingled with money in the account held for the benefit of a  
20 different community or neighborhood.

21 (h) An action under this section brought by the state or a  
22 governmental entity does not waive sovereign or governmental  
23 immunity for any purpose.

24 SECTION 11. Article 59.01(2), Code of Criminal Procedure,  
25 as amended by Chapters 127 (S.B. 1694), 822 (H.B. 73), and 885 (H.B.  
26 2278), Acts of the 80th Legislature, Regular Session, 2007, is  
27 reenacted and amended to read as follows:

1           (2) "Contraband" means property of any nature,  
2 including real, personal, tangible, or intangible, that is:

3           (A) used in the commission of:

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

6           (ii) any felony under Section 15.031(b),  
7 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
8 31, 32, 33, 33A, or 35, Penal Code;

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

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

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

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

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

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

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

25           (v) a Class A misdemeanor under Subchapter  
26 B, Chapter 365, Health and Safety Code, if the defendant has been  
27 previously convicted twice of an offense under that subchapter;

1 (vi) any felony under Chapter 152, Finance  
2 Code;

3 (vii) any felony under Chapter 32, Human  
4 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
5 involves the state Medicaid program;

6 (viii) a Class B misdemeanor under Chapter  
7 522, Business & Commerce Code; ~~[or]~~

8 (ix) a Class A misdemeanor under Section  
9 35.153, Business & Commerce Code; or

10 (x) any offense under Chapter 71, Penal  
11 Code;

12 (C) the proceeds gained from the commission of a  
13 felony listed in Paragraph (A) or (B) of this subdivision, a  
14 misdemeanor listed in Paragraph (B)(viii) or (x) of this  
15 subdivision, or a crime of violence;

16 (D) acquired with proceeds gained from the  
17 commission of a felony listed in Paragraph (A) or (B) of this  
18 subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of  
19 this subdivision, or a crime of violence; or

20 (E) used to facilitate or intended to be used to  
21 facilitate the commission of a felony under Section 15.031 or  
22 43.25, Penal Code.

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

25 Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If  
26 property described by Article 59.01(2)(B)(x) is subject to  
27 forfeiture under this chapter and Article 18.18, the attorney

1 representing the state may proceed under either this chapter or  
2 that article.

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

9 SECTION 14. Article 59.01(2), Code of Criminal Procedure,  
10 as amended by this Act, and Article 59.011, Code of Criminal  
11 Procedure, as added by this Act, apply only to the forfeiture of  
12 property used in the commission of an offense committed on or after  
13 the effective date of this Act. Forfeiture of property used in the  
14 commission of an offense committed before the effective date of  
15 this Act is governed by the law in effect when the offense was  
16 committed, and the former law is continued in effect for that  
17 purpose. For purposes of this section, an offense was committed  
18 before the effective date of this Act if any element of the offense  
19 occurred before that date.

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

22 Sec. 9. In addition to the information described by Section  
23 1, the judgment should reflect affirmative findings entered  
24 pursuant to Article 42.0197.

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

27 Art. 42.0197. FINDING REGARDING GANG-RELATED CONDUCT. In

1 the trial of an offense, on the motion of the attorney representing  
2 the state the judge shall make an affirmative finding of fact and  
3 enter the affirmative finding in the judgment in the case if the  
4 judge determines that the applicable conduct was engaged in as part  
5 of the activities of a criminal street gang as defined by Section  
6 71.01, Penal Code.

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

9 (a) The judge of the court having jurisdiction of the case  
10 shall determine the conditions of community supervision and may, at  
11 any time[~~7~~] during the period of community supervision, alter or  
12 modify the conditions. The judge may impose any reasonable  
13 condition that is designed to protect or restore the community,  
14 protect or restore the victim, or punish, rehabilitate, or reform  
15 the defendant. Conditions of community supervision may include,  
16 but shall not be limited to, the conditions that the defendant  
17 shall:

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

20 (2) Avoid injurious or vicious habits;

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

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

27 (5) Permit the supervision officer to visit the

1 defendant at the defendant's home or elsewhere;

2 (6) Work faithfully at suitable employment as far as  
3 possible;

4 (7) Remain within a specified place;

5 (8) Pay the defendant's fine, if one is [~~be~~] assessed,  
6 and all court costs whether a fine is [~~be~~] assessed or not, in one or  
7 several sums;

8 (9) Support the defendant's dependents;

9 (10) Participate, for a time specified by the judge,  
10 in any community-based program, including a community-service work  
11 program under Section 16 of this article;

12 (11) Reimburse the county in which the prosecution was  
13 instituted for compensation paid to appointed counsel for defending  
14 the defendant in the case, if counsel was appointed, or if the  
15 defendant was represented by a county-paid public defender, in an  
16 amount that would have been paid to an appointed attorney had the  
17 county not had a public defender;

18 (12) Remain under custodial supervision in a community  
19 corrections facility, obey all rules and regulations of the [~~such~~]  
20 facility, and pay a percentage of the defendant's income to the  
21 facility for room and board;

22 (13) Pay a percentage of the defendant's income to the  
23 defendant's dependents for their support while under custodial  
24 supervision in a community corrections facility;

25 (14) Submit to testing for alcohol or controlled  
26 substances;

27 (15) Attend counseling sessions for substance abusers

1 or participate in substance abuse treatment services in a program  
2 or facility approved or licensed by the Texas Commission on Alcohol  
3 and Drug Abuse;

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

7 (17) Submit to electronic monitoring;

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

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

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

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

27 (22) Submit a DNA sample to the Department of Public

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 SECTION 18. Article 42.12, Code of Criminal Procedure, is  
10 amended by adding Sections 13E and 13F to read as follows:

11 Sec. 13E. ELECTRONIC MONITORING OF CERTAIN MEMBERS OF  
12 CRIMINAL STREET GANG WHO ARE PLACED ON COMMUNITY SUPERVISION. (a)  
13 This section applies only to a defendant who:

14 (1) is identified as a member of a criminal street gang  
15 in an intelligence database established under Chapter 61; and

16 (2) has two or more times been previously convicted  
17 of, or received a grant of deferred adjudication community  
18 supervision or another functionally equivalent form of community  
19 supervision or probation for, a felony offense under the laws of  
20 this state, another state, or the United States.

21 (b) A court granting community supervision to a defendant  
22 described by Subsection (a) may, on the defendant's conviction of a  
23 felony offense, require as a condition of community supervision  
24 that the defendant submit to tracking under an electronic  
25 monitoring service or other appropriate technological service  
26 designed to track a person's location.

27 Sec. 13F. RESTRICTIONS ON OPERATION OF MOTOR VEHICLE FOR

1 DEFENDANTS CONVICTED OF CERTAIN ORGANIZED CRIME OFFENSES. A court  
2 granting community supervision to a defendant convicted of an  
3 offense under Chapter 71, Penal Code, may impose as a condition of  
4 community supervision restrictions on the defendant's operation of  
5 a motor vehicle, including specifying:

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

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

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

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

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

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

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

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

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

23 (b) A juvenile court, in a disposition hearing under Section  
24 54.04 regarding a child who has been adjudicated to have engaged in  
25 delinquent conduct that is also gang-related conduct, shall order  
26 the child to participate in a criminal street gang intervention  
27 program that is appropriate for the child based on the child's level

1 of involvement in the criminal activities of a criminal street  
2 gang. The intervention program:

3 (1) must include at least 12 hours of instruction; and

4 (2) may include voluntary tattoo removal.

5 (c) If a child required to attend a criminal street gang  
6 intervention program is committed to the Texas Youth Commission as  
7 a result of the gang-related conduct, the child must complete the  
8 intervention program before being discharged from the custody of or  
9 released under supervision by the commission.

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

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

15 (1) is identified as a member of a criminal street gang  
16 in an intelligence database established under Chapter 61, Code of  
17 Criminal Procedure; and

18 (2) has three or more times been convicted of, or  
19 received a grant of deferred adjudication community supervision or  
20 another functionally equivalent form of community supervision or  
21 probation for, a felony offense under the laws of this state,  
22 another state, or the United States.

23 (b) A parole panel may require as a condition of release on  
24 parole or to mandatory supervision that a releasee described by  
25 Subsection (a) submit to tracking under an electronic monitoring  
26 service or other appropriate technological service designed to  
27 track a person's location.

1           SECTION 21. Section 3.03, Penal Code, is amended by  
2 amending Subsection (b) and adding Subsection (b-1) to read as  
3 follows:

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

8                   (1) an offense:

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

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

17                   (2) an offense:

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

24                           (B) for which a plea agreement was reached in a  
25 case in which the accused was charged with more than one offense  
26 listed in Paragraph (A) committed against a victim younger than 17  
27 years of age at the time of the commission of the offense regardless

1 of whether the accused is charged with violations of the same  
2 section more than once or is charged with violations of more than  
3 one section; ~~or~~

4 (3) an offense:

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

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

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

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

18 SECTION 22. Section 9, Article 42.01, Code of Criminal  
19 Procedure, and Article 42.0197, Code of Criminal Procedure, as  
20 added by this Act, apply only to a judgment of conviction entered on  
21 or after the effective date of this Act.

22 SECTION 23. Section 11(a), Article 42.12, Code of Criminal  
23 Procedure, as amended by this Act, and Sections 13E and 13F, Article  
24 42.12, Code of Criminal Procedure, as added by this Act, apply only  
25 to a person who is placed on community supervision for an offense  
26 committed on or after the effective date of this Act. A person who  
27 is placed on community supervision for an offense committed before

1 the effective date of this Act is governed by the law in effect on  
2 the date the offense was committed, and the former law is continued  
3 in effect for that purpose. For purposes of this section, an  
4 offense was committed before the effective date of this Act if any  
5 element of the offense occurred before that date.

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

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

25 SECTION 26. Section 3.03(b), Penal Code, as amended by this  
26 Act, applies only to an offense committed on or after the effective  
27 date of this Act. An offense committed before the effective date of

1 this Act is covered by the law in effect when the offense was  
2 committed, and the former law is continued in effect for that  
3 purpose. For purposes of this section, an offense was committed  
4 before the effective date of this Act if any element of the offense  
5 occurred before that date.

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

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

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

14 (a) A political subdivision or an agency of this state may  
15 not enact an ordinance or rule that requires a business  
16 establishment to display an abusable volatile chemical, other than  
17 aerosol paint, in a manner that makes the chemical accessible to  
18 patrons of the business only with the assistance of personnel of the  
19 business.

20 SECTION 29. Chapter 250, Local Government Code, is amended  
21 by adding Section 250.006 to read as follows:

22 Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by  
23 Subsection (h), a county by order or a municipality by ordinance may  
24 require the owner of property within the jurisdiction of the county  
25 or municipality to remove graffiti from the owner's property on  
26 receipt of notice from the county or municipality.

27 (b) The order or ordinance must provide that a county or

1 municipality may not give notice to a property owner under  
2 Subsection (a) unless:

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

5 (2) the property owner has refused the offer.

6 (c) The order or ordinance must require a property owner to  
7 remove the graffiti on or before the 15th day after the date the  
8 property owner receives notice under Subsection (a). If the  
9 property owner fails to remove the graffiti on or before the 15th  
10 day after the date of receipt of the notice, the county or  
11 municipality may remove the graffiti and charge the expenses of  
12 removal to the property owner in accordance with a fee schedule  
13 adopted by the county or municipality.

14 (d) The notice required by Subsection (a) must be given:

15 (1) personally to the owner in writing;

16 (2) by letter sent by certified mail, addressed to the  
17 property owner at the property owner's address as contained in the  
18 records of the appraisal district in which the property is located;  
19 or

20 (3) if service cannot be obtained under Subdivision  
21 (1) or (2):

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

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

27 (C) by posting the notice on a placard attached

1 to a stake driven into the ground on the property to which the  
2 notice relates.

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

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

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

14 (g) A lien described by Subsection (f) attaches to the  
15 property on the date on which the statement of expenses is filed in  
16 the real property records of the county in which the property is  
17 located and is subordinate to:

- 18 (1) any previously recorded lien; and  
19 (2) the rights of a purchaser or lender for value who  
20 acquires an interest in the property subject to the lien before the  
21 statement of expenses is filed as described by Subsection (f).

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

- 25 (1) the graffiti is located on transportation  
26 infrastructure; and  
27 (2) the removal of the graffiti would create a hazard

1 for the person performing the removal.

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

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

10 (j) It is not a defense to prosecution under Subsection  
11 (a)(2) that the record, document, or thing made, presented, or used  
12 displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or  
13 another substantially similar statement intended to alert a person  
14 to the falsity of the record, document, or thing, unless the record,  
15 document, or thing displays the statement diagonally printed  
16 clearly and indelibly on both the front and back of the record,  
17 document, or thing in solid red capital letters at least one-fourth  
18 inch in height.

19 SECTION 32. Section 521.454, Transportation Code, is  
20 amended by adding Subsection (d) to read as follows:

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

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

26 (c) If conduct constituting an offense under this section  
27 also constitutes an offense under another law, the actor may be

1 prosecuted under this section, the other law, or both.

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

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

7 SECTION 35. Section 37.10(j), Penal Code, and Sections  
8 521.454(d), 521.455(c), and 521.456(e), Transportation Code, as  
9 added by this Act, apply only to an offense committed on or after  
10 the effective date of this Act. An offense committed before the  
11 effective date of this Act is covered by the law in effect when the  
12 offense was committed, and the former law is continued in effect for  
13 that purpose. For purposes of this section, an offense was  
14 committed before the effective date of this Act if any element of  
15 the offense occurred before that date.

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

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

21 (1) be relevant to the identification of an  
22 organization that is reasonably suspected of involvement in  
23 criminal activity; and

24 (2) consist of:

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

1 (B) a self-admission by the individual of  
2 criminal street gang membership that is made during a judicial  
3 proceeding; or

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

6 (i) a self-admission by the individual of  
7 criminal street gang membership that is not made during a judicial  
8 proceeding, including the use of the Internet or other electronic  
9 format or medium to post photographs or other documentation  
10 identifying the individual as a member of a criminal street gang;

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

14 (iii) a corroborated identification of the  
15 individual as a criminal street gang member by an informant or other  
16 individual of unknown reliability;

17 (iv) evidence that the individual frequents  
18 a documented area of a criminal street gang and associates with  
19 known criminal street gang members;

20 (v) evidence that the individual uses, in  
21 more than an incidental manner, criminal street gang dress, hand  
22 signals, tattoos, or symbols, including expressions of letters,  
23 numbers, words, or marks, regardless of how or the means by [~~the~~  
24 ~~format or medium in~~] which the symbols are displayed, that are  
25 associated with a criminal street gang that operates in an area  
26 frequented by the individual and described by Subparagraph (iv);

27 [~~or~~]

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

5 (vii) evidence that the individual has  
6 visited a known criminal street gang member, other than a family  
7 member of the individual, while the gang member is confined in or  
8 committed to a penal institution; or

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

12 (d) Evidence described by Subsections (c)(2)(C)(iv) and  
13 (vii) is not sufficient to create the eligibility of a person's  
14 information to be included in an intelligence database described by  
15 this chapter unless the evidence is combined with information  
16 described by another subparagraph of Subsection (c)(2)(C).

17 (e) In this article:

18 (1) "Family member" means a person related to another  
19 person within the third degree by consanguinity or affinity, as  
20 described by Subchapter B, Chapter 573, Government Code, except  
21 that the term does not include a person who is considered to be  
22 related to another person by affinity only as described by Section  
23 573.024(b), Government Code.

24 (2) "Penal institution" means a confinement facility  
25 operated by or under a contract with any division of the Texas  
26 Department of Criminal Justice, a confinement facility operated by  
27 or under contract with the Texas Youth Commission, or a juvenile

1 secure pre-adjudication or post-adjudication facility operated by  
2 or under a local juvenile probation department, or a county jail.

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

5 (b) Subject to Subsection (c), information collected under  
6 this chapter relating to a criminal street gang must be removed from  
7 an intelligence database established under Article 61.02 and the  
8 intelligence database maintained by the department under Article  
9 61.03 after five [~~three~~] years if:

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

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

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

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

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

26 (2) committed to a secure correctional facility  
27 operated by or under contract with the Texas Youth Commission, as

1 defined by Section 51.02, Family Code; or

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

8 SECTION 39. Article 61.06, Code of Criminal Procedure, as  
9 amended by this Act, applies to any applicable information  
10 maintained in an intelligence database under Chapter 61 of that  
11 code on or after the effective date of this Act.

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

14 Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED  
15 PERSON. (a) The requirements of Sections 8(a)(2)(B) and 9(b)(2)  
16 relating to the specification of the facilities from which or the  
17 place where a communication is to be intercepted do not apply if:

18 (1) in the case of an application for an order  
19 authorizing the interception of an oral communication:

20 (A) the application contains a full and complete  
21 statement as to why the specification is not practical and  
22 identifies the person committing or believed to be committing the  
23 offense and whose communications are to be intercepted; and

24 (B) a judge of competent jurisdiction finds that  
25 the specification is not practical; and

26 (2) in the case of an application for an order  
27 authorizing the interception of a wire or electronic communication:

1           (A) the application identifies the person  
2 committing or believed to be committing the offense and whose  
3 communications are to be intercepted;

4           (B) a judge of competent jurisdiction finds that  
5 the applicant has made an adequate showing of probable cause to  
6 believe that the actions of the person identified in the  
7 application could have the effect of thwarting interception from a  
8 specified facility; and

9           (C) the authority to intercept a wire or  
10 electronic communication under the order is limited to a period in  
11 which it is reasonable to presume that the person identified in the  
12 application will be reasonably proximate to the interception  
13 device.

14           (b) A person implementing an order authorizing the  
15 interception of an oral communication that, in accordance with this  
16 section, does not specify the facility from which or the place where  
17 a communication is to be intercepted may begin interception only  
18 after the person ascertains the place where the communication is to  
19 be intercepted.

20           (c) A provider of wire or electronic communications that  
21 receives an order authorizing the interception of a wire or  
22 electronic communication that, in accordance with this section,  
23 does not specify the facility from which or the place where a  
24 communication is to be intercepted may move the court to modify or  
25 quash the order on the ground that the provider's assistance with  
26 respect to the interception cannot be performed in a timely or  
27 reasonable fashion. On notice to the state, the court shall decide

1 the motion expeditiously.

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

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

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

10 (1) an individual elected, appointed, or employed to  
11 serve as a peace officer for a governmental entity of this state  
12 under Article 2.12, Code of Criminal Procedure; or

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

15 (c) The unit shall:

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

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

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

26 (4) if requested by the agency, assist a federal law  
27 enforcement agency with the investigation of such allegations

1 against law enforcement officers in the agency;

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

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

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

13 (e) To the extent allowed by law, a state or local law  
14 enforcement agency shall cooperate with the public corruption unit  
15 by providing information requested by the unit as necessary to  
16 carry out the purposes of this section. Information described by  
17 this subsection is excepted from required disclosure under Chapter  
18 552 in the manner provided by Section 552.108.

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

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

27 (b) The grant program administered under this section must

1 be directed toward regions of this state that have demonstrably  
2 high levels of gang violence.

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

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

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

14 SECTION 43. Section 9A, Article 18.20, Code of Criminal  
15 Procedure, as added by this Act, applies only to an application for  
16 an order authorizing the interception of a wire, oral, or  
17 electronic communication that is submitted on or after the  
18 effective date of this Act. An application that was submitted  
19 before the effective date of this Act is covered by the law in  
20 effect on the date the application was submitted, and the former law  
21 is continued in effect for that purpose.

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

25 SECTION 45. To the extent of any conflict, this Act prevails  
26 over another Act of the 81st Legislature, Regular Session, 2009,  
27 relating to nonsubstantive additions to and corrections in enacted

1 codes.

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

4 (b) The impact statement must include information  
5 concerning:

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

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

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

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

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

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

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

21 (c) The Legislative Budget Board shall complete the impact  
22 statement not later than December 1 each year, beginning December  
23 1, 2010, and make it available to the public on its website.

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

26 (b) Sections 37.110 and 51.973, Education Code, and Section  
27 42.064, Human Resources Code, as added by this Act, take effect

H.B. No. 2086

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.

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President of the Senate

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Speaker of the House

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.

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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.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor