

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5-30-09

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2086 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

[Signature]

SEN. WHITTINGTON

[Signature]

SEN. SELIGER

[Signature]

SEN. CAROWA

[Signature]

SEN. EDIE

[Signature]

SEN. OGDEN
On the part of the Senate

[Signature]

REP. MOODY - CHAIR

[Signature]

REP. GALLEGOS

[Signature]

REP. MIKLOS

[Signature]

REP. RIDDLE

[Signature]

REP. FLETCHER
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2086

A BILL TO BE ENTITLED

1 AN ACT
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 3g(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.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION __. Title 4, Civil Practices and Remedies Code, is amended by adding a new chapter 98A to read as follows:

SUBCHAPTER 98A. CIVIL RACKETEERING

Sec. 98A.001. CIVIL RACKETEERING. (1) A person commits racketeering if for financial gain, the person knowingly engages in an organized enterprise that commits, facilitates, or promotes:

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

(B) the promotion of prostitution, as described by Section 43.03, Penal Code;

(C) compelling prostitution, as described by Section 43.05, Penal Code;

(D) the unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(E) the 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;

(F) any offense under Subchapter B, Chapter 43, Penal Code, depicting or involving conduct by or directed toward a child younger than 18 years of age; or

(G) trafficking of persons, as described by Chapter 20A, Penal Code; and

(2) the event, omission, transaction, or occurrence, or the series of events, omissions, transactions, or occurrences, relating to the act that meets the requirements of

CONFERENCE

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Subdivision (1) takes place or occurs in more than one county in Texas.

Sec. 98A.002 SUIT TO ABATE RACKETEERING.

(a) The attorney general may bring suit in the name of the state against any person who engages in a pattern or practice of racketeering and may seek to recover civil remedies, costs of suit, including reasonable attorney's fees, and any appropriate injunctive relief, including the creation of a receivership, the enforcement of a constructive trust, prejudgment writs of attachment under Chapter 61 for the purpose of the freezing, preserving, and disgorging of assets, or other remedies or restraints the court considers proper.

b) This subchapter does not authorize suit by a person that sustains injury as a result of racketeering.

(c) Notwithstanding any other provision of this subchapter, the provisions of Sections 59.13 and 59.14, Code of Criminal Procedure, shall apply to any remedy under this section, and in no event shall the remedies herein result in the impairment of a security interest in property subject to a bona fide lien.

Sec. 98A.003 REMEDIES NOT EXCLUSIVE. A proceeding under this subchapter may be in addition to or in the alternative of any other action, civil or criminal, available under the laws of this state.

Section 98A.004. EVIDENCE. (a) In a proceeding under this subchapter, the state bears the burden of proof by a preponderance of the evidence.

(b) An individual may not be held liable in damages or

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

for other relief under this subchapter based on the conduct of another unless the finder of fact, by a preponderance of the evidence, finds that the individual authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the other.

d) A person may not be held liable in damages or for other relief under this subchapter based on the conduct of an agent unless the finder of fact, by a preponderance of the evidence, finds that a director or high managerial agent of the person performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct of the agent.

(e) A bank or savings and loan association insured by the Federal Deposit Insurance Corporation, a credit union insured by the National Credit Union Administration, or a holder of a money transmissions license under Chapter 151, Finance Code, may not be held liable in damages or for other relief under this subchapter unless the finder of fact, by a preponderance of the evidence, finds that the board of directors performed, authorized, requested, commanded, participate in, ratified or recklessly tolerated the unlawful conduct.

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

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

SECTION 1. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

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;

SENATE VERSION

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;

CONFERENCE

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

- (11) any offense under Section 37.11(a);
- (12) any offense under Chapter 20A; ~~[or]~~
- (13) any offense under Section 37.10;
- (14) any offense under Section 28.08; or
- (15) any offense under Section 38.06, 38.07, 38.09, or 38.11.

No equivalent provision.

SENATE VERSION

- (11) any offense under Section 37.11(a);
- (12) any offense under Chapter 20A; ~~[or]~~
- (13) any offense under Section 37.10; or
- (14) any offense under Section 38.06, 38.07, 38.09, or 38.11.

SECTION __. (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,

CONFERENCE

SECTION 46. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

beginning December 1, 2010, and make it available to the public on its website.

SECTION 2. The change in law made 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.

Same as House version.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2009.

Same as House version.

[See SECTION 47 below for effective date.]

No equivalent provision.

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

SECTION 2. Same as Senate version.

(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:

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

	<p><u>(A) further the criminal activities of the criminal street gang; or</u> <u>(B) avoid detection as a member of a criminal street gang.</u></p>	
<p>No equivalent provision.</p>	<p>SECTION __. Subsection (a), Section 22.015, Penal Code, is amended by adding Subdivision (3) to read as follows: <u>(3) "Family" has the meaning assigned by Section 71.003, Family Code.</u></p>	<p>Same as House version.</p>
<p>No equivalent provision.</p>	<p>SECTION __. Subsection (b), Section 22.015, Penal Code, is amended to read as follows: (b) A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang, the person: (1) <u>threatens the child or a member of the child's family with imminent bodily injury; or</u> (2) <u>causes bodily injury to the child or a member of the child's family.</u></p>	<p>Same as House version.</p>
<p>No equivalent provision.</p>	<p>SECTION __. Chapter 33, Penal Code, is amended by adding Section 33.06 to read as follows: <u>Sec. 33.06. ONLINE HARASSMENT TO FURTHER INTERESTS OF CRIMINAL STREET GANG. (a) In this section:</u> <u>(1) "Commercial social networking site" means any business, organization, or other similar entity operating a website that permits persons to become registered users</u></p>	<p>Same as House version.</p>

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program.

(2) "Criminal street gang" has the meaning assigned by Section 71.01.

(3) "Electronic communication" means the transmission of a sign, signal, writing, image, sound, text, or other data through the use of an electronic device, including a telephone, cellular telephone, text messaging device, personal data assistant, computer, or wireless communications device.

(b) A person commits an offense if the person sends an electronic communication or posts a message on an electronic message board or commercial social networking site with the intent to:

(1) abuse, intimidate, harass, alarm, or threaten another person; and

(2) benefit, promote, or further the interests of a criminal street gang.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted of an offense under this section.

No equivalent provision.

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

(a) A person commits an offense if, with the intent to

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 [~~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;

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (10) any offense under Chapter 34 or 35;
- (11) any offense under Section 37.11(a);
- (12) any offense under Chapter 20A; [ø]
- (13) any offense under Section 37.10;
- (14) any offense under Section 28.08; or
- (15) any offense under Section 46.06(a)(1) or 46.14.

No equivalent provision.

SECTION __. 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;

SECTION 3. Same as Senate version, except as follows:

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(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) Except as provided by Subsection (c), the punishment prescribed for an offense under Section 71.02 is increased to the punishment prescribed for the next highest category of offense if the actor is 17 years of

Inserts new Subsection (b) making the section apply 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, and conforms remaining Subsection designations.

Changes the designation of the offense under which a

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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) shopping mall;

(D) movie theater;

(E) premises of a public or private youth center; or

(F) playground;

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility; or

(3) on a school bus.

(c) The punishment prescribed for an offense under Section 71.02 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

punishment is increased in Subsection (b), Senate version, from the punishment prescribed for an offense under Section 71.02 to the punishment prescribed for an offense described by Subsection (b).

Makes the punishment increase if the actor committed the offense in, on, or within 300 feet, rather than 1,000 feet, of a shopping mall or movie theater.

Conforms described offense designation.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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 4. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. 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 5. Same as Senate version.

No equivalent provision.

SECTION __. 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 6. Same as Senate version.

No equivalent provision.

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

SECTION 7. Same as Senate version.

No equivalent provision.

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

SECTION 8. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

No equivalent provision.

SENATE VERSION

SECTION __. Subsection (e), Section 15.031, Subsection (b), Section 22.015, and Subsection (a), Section 71.02, 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 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 __. 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, 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

CONFERENCE

SECTION 9. Same as Senate version, except removes Subsection (b), Section 22.015 from the provision.

SECTION 10. Same as Senate version, except as follows:

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 street gang may be seized in execution on a judgment under this section.

(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

Adds provisions to Subsection (e) prohibiting the seizure of property if the property owner or interest holder can establish the owner or interest holder was not a member or the criminal street gang and did not violate the temporary or permanent injunctive order by showing that the *property was stolen from the owner or interest holder or 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.*

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Subdivision (2), Article 59.01, 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:

SECTION 11. Same as Senate version, except as follows:

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (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;
 - (vi) any felony under Chapter 152, Finance Code;
 - (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code; [øø]
(ix) a Class A misdemeanor under Section 35.153, Business & Commerce Code;
(x) any offense under Chapter 71, Penal Code; or
(xi) any offense under Section 46.06(a)(1) or 46.14, 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), (x), or (xi) 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), (x), or (xi) 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.

Removes (xi) and subsequent references to the item..

No equivalent provision.

SECTION __. 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) or (xi) 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 12. Same as Senate version.

No equivalent provision.

SECTION __. Section 125.070, Civil Practice and

SECTION 13. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Subdivision (2), Article 59.01, 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 14. Same as Senate version.

No equivalent provision.

SECTION __. 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 15. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. 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 16. Same as Senate version.

No equivalent provision.

SECTION __. Subsection (a), Section 11, 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 character, including any person, other than a family

SECTION 17. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 ~~[be]~~ assessed, and all court costs whether a fine is ~~[be]~~ 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 ~~[such]~~ facility, and pay a percentage of the defendant's income to the facility for room and

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant;

(23) In any manner required by the judge, provide public notice of the offense for which the defendant was placed on community supervision in the county in which the offense was committed; and

(24) Reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case.

No equivalent provision.

SECTION __. Article 42.12, Code of Criminal Procedure, is amended by adding Section 13E to read as follows:

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

(1) is identified as a member of a criminal street gang in

SECTION 18. Same as Senate version, except adds Sec. 13F. RESTRICTIONS ON OPERATION OF MOTOR VEHICLE FOR DEFENDANTS CONVICTED OF CERTAIN ORGANIZED CRIME OFFENSES.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

an intelligence database established under Chapter 61;
and

(2) has two or more times been previously 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 court granting community supervision to a defendant described by Subsection (a) may, on the defendant's conviction of a felony offense, require as a condition of community supervision that the defendant submit to tracking under an electronic monitoring service or other appropriate technological service designed to track a person's location.

No equivalent provision.

SECTION __. 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

SECTION 19. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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

SECTION 20. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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;

SECTION 21. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(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; [or]

(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.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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 22. Same as Senate version.

No equivalent provision.

SECTION __. Subsection (a), Section 11, Article 42.12, Code of Criminal Procedure, as amended by this Act, and Section 13E, 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 23. Same as Senate version, except adds Section 13F, Article 42.12, Code of Criminal Procedure.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. 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 24. Same as Senate version.

No equivalent provision.

SECTION __. 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 25. Same as Senate version.

No equivalent provision.

SECTION __. Subsection (b), Section 3.03, 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

SECTION 26. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

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

SECTION 27. Same as Senate version.

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.

No equivalent provision.

SECTION __. Subsections (a) and (c), Article 102.0171, Code of Criminal Procedure, are amended to read as follows:

Same as House version.

(a) A defendant convicted of an offense under Section 28.08, Penal Code, in a county court, county court at law, or district court shall pay a [~~\$50~~] juvenile delinquency prevention and graffiti eradication fee as a cost of court. The amount of the fee under this section must be not less than \$50 or more than \$500. In setting the amount of the fee, the court shall increase the fee based on the amount of pecuniary loss in the case and the number of times the defendant has been previously convicted of an offense under Section 28.08, Penal Code.

(c) The clerks of the respective courts shall collect the costs and pay them to the county treasurer or to any other official who discharges the duties commonly delegated

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

to the county treasurer for deposit in a fund to be known as the county juvenile delinquency prevention fund. A fund designated by this subsection may be used only to:

- (1) repair damage caused by the commission of offenses under Section 28.08, Penal Code;
- (2) provide educational and intervention programs and materials, including printed educational materials for distribution to primary and secondary school students, designed to prevent individuals from committing offenses under Section 28.08, Penal Code;
- (3) provide to the public rewards for identifying and aiding in the apprehension and prosecution of offenders who commit offenses under Section 28.08, Penal Code;
- (4) provide funding for teen recognition and teen recreation programs;
- (5) provide funding for local teen court programs;
- (6) provide funding for the local juvenile probation department; ~~and~~
- (7) provide educational and intervention programs designed to prevent juveniles from engaging in delinquent conduct; and
- (8) provide funding for community art programs.

No equivalent provision.

SECTION __. Subsection (a), Section 54.0461, Family Code, is amended to read as follows:

(a) If a child is adjudicated as having engaged in delinquent conduct that violates Section 28.08, Penal Code, the juvenile court shall order the child, parent, or other person responsible for the child's support to pay to

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the court a [~~\$50~~] juvenile delinquency prevention fee as a cost of court. The amount of the fee under this section must be not less than \$50 or more than \$500. In setting the amount of the fee, the court shall increase the fee based on the amount of pecuniary loss resulting from the conduct and the number of times the child has been previously adjudicated as having engaged in delinquent conduct violating Section 28.08, Penal Code.

No equivalent provision.

SECTION __. Section 102.041, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Same as House version.

Sec. 102.041. ADDITIONAL COURT COSTS ON CONVICTION IN DISTRICT COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a district court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) ... \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) ... \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
- (4) a security fee on a felony offense (Art. 102.017, Code of Criminal Procedure) ... \$5;
- (5) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3; and
- (6) a juvenile delinquency prevention and graffiti

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

eradication fee (Art. 102.0171, Code of Criminal Procedure) ... not less than \$50 or more than \$500 [~~\$5~~].

SECTION __. Section 102.061, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a statutory county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) ... \$20;
 - (2) a fee for services of the clerk of the court (Art. 102.005, Code of Criminal Procedure) ... \$40;
 - (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
 - (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3;
 - (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... not less than \$50 or more than \$500 [~~\$5~~];
- and
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) ... not to exceed \$5.

Same as House version.

No equivalent provision.

SECTION __. Section 102.081, Government Code, as

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN COUNTY COURT: CODE OF CRIMINAL PROCEDURE. The clerk of a county court shall collect fees and costs under the Code of Criminal Procedure on conviction of a defendant as follows:

- (1) a jury fee (Art. 102.004, Code of Criminal Procedure) ... \$20;
- (2) a fee for clerk of the court services (Art. 102.005, Code of Criminal Procedure) ... \$40;
- (3) a records management and preservation services fee (Art. 102.005, Code of Criminal Procedure) ... \$25;
- (4) a security fee on a misdemeanor offense (Art. 102.017, Code of Criminal Procedure) ... \$3;
- (5) a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... not less than \$50 or more than \$500 [~~\$5~~]; and
- (6) a juvenile case manager fee (Art. 102.0174, Code of Criminal Procedure) ... not to exceed \$5.

No equivalent provision.

SECTION __. Section 103.0212, Government Code, is amended to read as follows:

Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the Family Code if ordered by the court or otherwise required:

(1) in family matters:

(A) issuing writ of withholding (Sec. 8.262, Family Code) ... \$15;

(B) filing copy of writ of withholding to subsequent employer (Sec. 8.267, Family Code) ... \$15;

(C) issuing and delivering modified writ of withholding or notice of termination (Sec. 8.302, Family Code) ... \$15;

(D) issuing and delivering notice of termination of withholding (Sec. 8.303, Family Code) ... \$15;

(E) issuance of change of name certificate (Sec. 45.106, Family Code) ... \$10;

(F) protective order fee (Sec. 81.003, Family Code) ... \$16;

(G) filing suit requesting adoption of child (Sec. 108.006, Family Code) ... \$15;

(H) filing fees for suits affecting parent-child relationship (Sec. 110.002, Family Code):

(i) suit or motion for modification (Sec. 110.002, Family Code) ... \$15;

(ii) motion for enforcement (Sec. 110.002, Family Code) ... \$15;

(iii) notice of application for judicial writ of withholding (Sec. 110.002, Family Code) ... \$15;

(iv) motion to transfer (Sec. 110.002, Family Code) ... \$15;

(v) petition for license suspension (Sec. 110.002, Family

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Code) ... \$15;
(vi) motion to revoke a stay of license suspension (Sec. 110.002, Family Code) ... \$15; and
(vii) motion for contempt (Sec. 110.002, Family Code) ... \$15;
(I) order or writ of income withholding to be delivered to employer (Sec. 110.004, Family Code) ... not to exceed \$15;
(J) filing fee for transferred case (Sec. 110.005, Family Code) ... \$45;
(K) filing a writ of withholding (Sec. 158.319, Family Code) ... \$15;
(L) filing a request for modified writ of withholding or notice of termination (Sec. 158.403, Family Code) ... not to exceed \$15;
(M) filing an administrative writ to employer (Sec. 158.503, Family Code) ... not to exceed \$15; and
(N) genetic testing fees in relation to a child born to a gestational mother (Sec. 160.762, Family Code) ... as assessed by the court; and
(2) in juvenile court:
(A) fee schedule for deferred prosecution services (Sec. 53.03, Family Code) ... maximum fee of \$15 a month;
(B) a request fee for a teen court program [~~administration fee~~] (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;
(C) court costs for juvenile probation diversion fund

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(Sec. 54.0411, Family Code) ... \$20;
(D) a juvenile delinquency prevention fee (Sec. 54.0461, Family Code) ... not less than \$50 or more than \$500 [~~\$5~~]; [~~and~~]
(E) a court fee for child's probationary period (Sec. 54.061, Family Code) ... not to exceed \$15 a month; and
(F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code) ... \$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10.

No equivalent provision.

SECTION __. Subsection (a), Section 485.018, 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 28. Same as Senate version.

No equivalent provision.

SECTION __. 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

SECTION 29. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION __. Chapter 30, Penal Code, is amended by adding Section 30.021 to read as follows:
Sec. 30.021. BURGLARY OF BUILDING TO CREATE GRAFFITI. (a) A person commits an offense if, without the effective consent of the owner, the person: (1) enters a building, or any portion of a building, not then open to the public, with the intent to commit an offense under Section 28.08; (2) remains concealed, with the intent to commit an offense under Section 28.08, in a building; or (3) enters a building and commits or attempts to commit an offense under Section 28.08. (b) For purposes of this section, "enter" has the meaning assigned by Section 30.02. (c) An offense under this section is a state jail felony.

Same as House version.

No equivalent provision.

SECTION __. 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 30. Same as Senate version.

No equivalent provision.

SECTION __. Subsections (a) and (c), Article 102.0171, Code of Criminal Procedure, and Sections 102.041, 102.061, and 102.081, Government Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Subsection (a), Section 54.0461, Family Code, and Section 103.0212, Government Code, as amended by this Act, apply 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.

Same as House version.

No equivalent provision.

SECTION __. 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

SECTION 31. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

	<u>and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.</u>	
No equivalent provision.	SECTION ___. Section 521.454, Transportation Code, is amended by adding Subsection (d) to read as follows: <u>(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.</u>	SECTION 32. Same as Senate version.
No equivalent provision.	SECTION ___. Section 521.455, Transportation Code, is amended by adding Subsection (c) to read as follows: <u>(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.</u>	SECTION 33. Same as Senate version.
No equivalent provision.	SECTION ___. Section 521.456, Transportation Code, is amended by adding Subsection (e) to read as follows: <u>(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.</u>	SECTION 34. Same as Senate version.
No equivalent provision.	SECTION ___. Subsection (j), Section 37.10, Penal Code, and Subsection (d), Section 521.454, Subsection (c), Section 521.455, and Subsection (e), Section 521.456, Transportation Code, as added by this Act, apply only to an offense committed on or after the	SECTION 35. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Chapter 46, Penal Code, is amended by adding Section 46.14 to read as follows:

Same as House version.

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct:

(1) on more than one occasion; or

(2) for profit or any other form of remuneration.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law,

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

the actor may be prosecuted under this section, the other law, or both.

SECTION __. 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;

(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

SECTION 36. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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); ~~or~~

(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

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Subsection (b), Article 61.06, 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

SECTION 37. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

(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 __. Subsection (c), Article 61.06, 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.

No equivalent provision.

SECTION __. Article 61.06, Code of Criminal

SECTION 38. Same as Senate version.

SECTION 39. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Subsection (a), Section 521.343, Transportation Code, is amended to read as follows:
(a) Except as provided by Sections 521.342(b), 521.344(a), (b), (d), (e), (f), (g), (h), and (i), 521.345, 521.346, 521.3465, [~~and~~] 521.351, and 521.352, a suspension under this subchapter is for one year.

Same as House version.

No equivalent provision.

SECTION __. Subchapter O, Chapter 521, Transportation Code, is amended by adding Section 521.352 to read as follows:
Sec. 521.352. SUSPENSION OR PROHIBITION FOR CERTAIN ORGANIZED CRIME OFFENSES. (a) A person's license is automatically suspended on conviction of the person for an offense under Chapter 71, Penal Code.
(b) The department may not issue a driver's license to a person convicted of an offense specified in Subsection (a) who, on the date of the conviction, did not hold a license.
(c) The period of license suspension or prohibition under this section begins on a date set by the court that is not earlier than the date of conviction or later than the 30th day after the date of conviction. The period of license suspension or prohibition under this section expires on

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

the first anniversary of the date the suspension or prohibition began.

SECTION __. Section 521.457, Transportation Code, is amended by amending Subsection (e) and adding Subsection (f-2) to read as follows:

(e) Except as provided by Subsections (f), ~~and~~ (f-1), and (f-2), an offense under this section is a Class C misdemeanor.

(f-2) If it is shown on the trial of an offense under this section that the person operated a motor vehicle on a highway during a period that the person's driver's license was suspended under Section 521.352 or the person was prohibited from obtaining a driver's license under that section, the offense is a Class A misdemeanor.

Same as House version.

No equivalent provision.

SECTION __. (a) The change in law made by this Act to Section 521.352, Transportation Code, as added by this Act, and Section 521.457, Transportation Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act.

(b) 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 subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION __. 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

CONFERENCE

SECTION 40. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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.

SECTION 41. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(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

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. Section 421.082, Government Code, is amended by adding Subsections (e), (f), and (g) to read as follows:

(e) The center shall annually submit to the governor and the legislature a report regarding criminal street gangs and gang-related crime. The report must include:

(1) an evaluation of the threat that criminal street gangs and gang-related crime pose to communities in this state that are at or near the international border between this state and the United Mexican States;

(2) an evaluation of the threat that criminal street gangs and gang-related crime occurring at or near the border pose to other areas of this state;

Same as House version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(3) identification of any law enforcement strategies in this state or another jurisdiction that have been effective in preventing the growth or proliferation of criminal street gangs or gang-related crime; and

(4) recommendations on actions that may be taken to:

(A) prevent criminal street gangs from committing human trafficking offenses;

(B) reduce criminal street gang violence throughout this state, with specific recommendations concerning reduction of criminal street gang violence at or near the border;

(C) prevent the growth or proliferation of criminal street gangs throughout this state, with specific recommendations concerning prevention of the growth or proliferation of criminal street gangs at or near the border; and

(D) ensure that law enforcement personnel receive the necessary training and education to effectively deal with the problems created by criminal street gangs and gang-related crime.

(f) On request, a criminal justice or juvenile justice agency of this state shall provide to the center information relating to criminal street gangs and gang-related crime.

(g) The report required under Subsection (e) may not contain any information that:

(1) is considered sensitive intelligence information by the agency that provided the information; or

(2) could jeopardize an ongoing investigation being

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

conducted by the agency that provided the information.

SECTION __. 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 42. Same as Senate version.

No equivalent provision.

SECTION __. 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

SECTION 43. Same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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.

No equivalent provision.

SECTION __. 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 44. Same as Senate version.

No equivalent provision.

SECTION __. The Texas Fusion Center shall submit the first annual report regarding criminal street gangs and gang-related crime to the governor and the legislature as required by Subsection (e), Section 421.082, Government Code, as added by this Act, not later than September 1, 2010.

Same as House version.

No equivalent provision.

SECTION __. 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 codes.

SECTION 45. Same as Senate version.

No equivalent provision.

SECTION __. Notwithstanding any other provision of this Act, Sections 37.110 and 51.973, Education Code, and Section 42.064, Human Resources Code, as added by this Act, take effect immediately if this Act receives a vote of two-thirds of all the members elected to each

SECTION 47. Substantially the same as Senate version.

House Bill 2086
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, those sections of the Education Code and Human Resources Code take effect September 1, 2009.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2086** by Moody (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.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2086, Conference Committee Report: a negative impact of (\$26,000,000) through the biennium ending August 31, 2011.

There are provisions of the bill that are anticipated to have no significant fiscal impact to the State or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund 1
2010	(\$13,000,000)
2011	(\$13,000,000)
2012	(\$13,000,000)
2013	(\$13,000,000)
2014	(\$13,000,000)

Fiscal Analysis

The bill would amend the Civil Practice and Remedies Code, Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, Local Government Code, Penal Code, Transportation Code, Education Code, and Human Resources Code relating to criminal street gangs and certain other offenses.

The bill would increase the punishment of criminal solicitation of a minor to the same category as the

solicited offense, depending on the circumstances, if certain elements of a criminal street gang are present. The offense is currently punishable as one category lower than the solicited offense. The bill would create gang-free zones and increase punishment for certain offenses of engaging in organized criminal activity to the next higher category of offense if they occur in gang-free zones. The bill would allow for the use of maps as evidence of location or area for the purpose of showing the location and boundaries of gang-free zones. The bill would create the offense of directing activities of certain criminal street gangs punishable as a felony of the first degree. The bill would permit sentences for more than one offense arising out of the same criminal episode to run concurrently or consecutively if there is an affirmative finding regarding gang-related conduct unless the defendant's case was transferred to the court from the juvenile court. The bill would amend the Penal Code to include the offenses of escape, permitting or facilitating escape, introducing or providing implements for escape, and prohibited substances and items in adult or juvenile correctional or detention facility or on property of the Texas Department of Criminal Justice or Texas Youth Commission as punishable as engaging in organized criminal activity. The engaging in organized criminal activity provision increases the punishment of certain offenses to the next higher category. The fiscal impact of these provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would create new civil action against criminal street gangs for a violation of injunction. The bill would make property obtained through organized crime offenses subject to forfeiture. The bill would create a finding regarding gang-related conduct to be entered in the judgment of a case if the applicable conduct was engaged in as part of the activities of a criminal street gang. The bill would add to possible conditions of community supervision relating to criminal street gangs. The bill would require juveniles who have been found to have engaged in delinquent conduct that is also gang-related conduct to participate in a criminal street gang intervention program. The bill would amend the Health and Safety Code and Local Government Code as they relate to graffiti and aerosol paint. The bill would amend the Penal Code relating to the prosecution and punishment for certain criminal offenses involving the use of a false or fictitious identity or identifying document. The bill would add to the elements that must apply when determining criminal information collected in an intelligence database used to investigate and prosecute offenses committed by criminal street gangs. The bill would also change from three to five years the length of time records may be retained before information is removed. The bill would amend the Code of Criminal Procedure relating to an interception order for communication by specified person. The bill would amend the Education Code and Human Resources Code to require superintendents of public school districts, administrators of private schools, governing boards of higher education institutions, and day-care centers to provide information on gang-free zones and inform of the consequences of engaging in organized criminal activity within those zones. The bill would also require the Legislative Budget Board (LBB) to prepare an annual criminal justice impact policy statement for this Act. These provisions of the bill are not expected to have a significant fiscal impact or could be absorbed with existing resources.

The bill would permit the use of electronic monitoring of certain members of criminal street gangs who are placed on community supervision or released to parole or mandatory supervision. The Texas Department of Criminal Justice states the cost for active GPS monitoring services is \$9.95 per day. It is anticipated that the cost could be absorbed with existing resources.

The bill would create a "Public Corruption Unit" within the Department of Public Safety (DPS). DPS states that they are unable to determine an accurate measure of the quantity of requests for assistance for the Public Corruption Unit; therefore, they are unable to determine the subsequent fiscal impact for provisions establishing that unit.

The bill would require the Governor's Criminal Justice Division to administer a competitive grant program to support regional, multidisciplinary approaches to combat gang violence through the coordination of gang prevention, intervention, and suppression activities. The bill would allow the criminal justice division to use any revenue available for the purposes of the bill. Implementation of the bill would result in an estimated \$13 million a year in General Revenue to provide grants to combat gang violence.

Methodology

The \$13 million for anti-gang grants is based on the amount in the Governor's Office Homeland

Security plan under the Governor's Office for anti-gang activities.

Local Government Impact

There are provisions of the bill that are anticipated to have no significant fiscal impact to units of local government or that are assumed could be reasonably absorbed with existing resources. The fiscal impact of other provisions of the bill cannot be determined due to the unavailability of reliable data or information.

The bill would amend the Local Government Code to allow a county by order or a municipality by ordinance to require a person who sells aerosol paint to impose a surcharge not to exceed \$1 on each sale of aerosol paint. Money collected under this section may be used by local government only for purposes related to graffiti abatement.

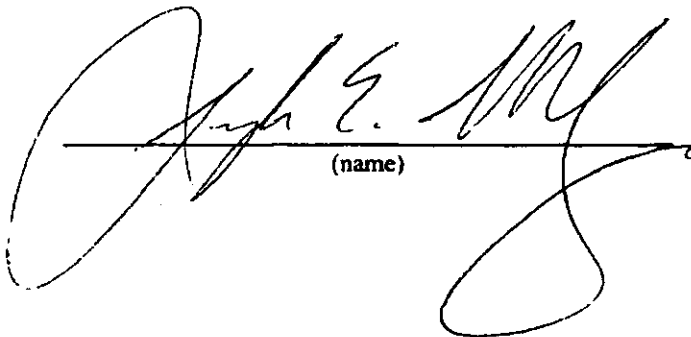
Source Agencies: 301 Office of the Governor, 405 Department of Public Safety, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TP, KJG

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2086 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5.30.09
(date)