



Street Takeovers

Current Law

Prior to passage of HB 2315 and SB 1495 in 2021, officers had been using the Deadly Conduct statute to seize cars engaged in street takeovers when appropriate. However, in the 87th legislative session, a new, more specific, offense of "Reckless Driving Exhibition" in Penal Code 42.03(f) was created.

The legal concept of "in pari materia" requires that a violator must be charged with the most specific charge available, unless language exists in that law that would allow officers to charge from any applicable law. Because of the new, more specific, offense of "Reckless Driving Exhibition" contained in Penal Code 42.03(f), police cannot use the charge of Deadly Conduct cannot the basis of an asset forfeiture seizure in some circumstances.

Problem

The issue is that the new Reckless Driving Exhibition offense is not an enumerated offense under Engaging in Organized Criminal Activity (Penal Code, Chapter 71), so it cannot be elevated into Chapter 59 using Chapter 71 as a legal basis for seizing the vehicle used in the conduct. Organized street racing and street takeovers continued to plague Houston. Addressing this unintended consequence will allow officers to seize vehicles if and when appropriate.

Proposed Legislative Change

This proposal seeks to address these issues by adding relevant and clarifying language to the appropriate statutes identified above.

Penal Code Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

- (18) any offense under Section 16.02; ~~or~~
- (19) any offense classified as a felony under the Tax Code; or
- (20) any offense under Section 42.03(d) or 42.03(e).

Penal Code Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, but not both.

Code of Criminal Procedure, Chapter 59, Forfeiture of Contraband

Art. 59.01(2) Definitions

(xv) Any offense under Section 42.03, Penal Code