

BILL ANALYSIS

Senate Research Center
82R4675 JAM-D

S.B. 9
By: Williams et al.
Transportation & Homeland Security
3/28/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas is facing major threats from a lack of security on the state's border with Mexico. Mexican drug cartels have been waging a war with one another over illegal trade routes and gang turf, and innocent people on both sides of the border are getting caught in the crossfire. This bill makes changes to current state laws to provide for increased border security, and attempts to create more avenues for the state to best evaluate the threat level, and combat that threat by maximizing the use of current resources, including technology.

While state and local officials have been combating border crime for many years, the job of securing the national border is one that is responsibility of the federal government. In recent years, the drug war has become more violent and pervasive, and the federal government has failed to provide the necessary resources to protect this state and country from the ensuing threat. With the lack of support from the federal government, the responsibility to keep citizens safe has fallen to the state.

This bill includes a variety of measures to protect Texans, including requiring every person arrested in Texas to be run through the federal Secure Communities Program, which is already in use in all county jails in the state. This bill will allow the Department of Public Safety of the State of Texas (DPS) to use global positioning system tracking devices without a court order, in the course of a criminal investigation, when an order is not constitutionally required, which will help DPS track and combat gang activity. This bill increases drug fines by \$100 for a misdemeanor conviction and \$200 for felony conviction. This bill requires DPS to conduct a pilot program for the use of license plate readers installed in law enforcement vehicles. This bill expands the definition of a "special ranger" to allow the Public Safety Commission to utilize retired DPS officers, on a voluntary basis, to assist with administrative tasks. This bill requires the Texas Commission on Jail Standards to include in its monthly report the number of people in Texas prisons claiming foreign citizenship.

This bill improves crime statutes by increasing penalties and making existing statutes more desirable for prosecutors to use. Specifically, this bill prohibits an inmate serving time for an organized crime or directing criminal activities offense from being eligible for parole until the inmate has served at least half of his or her sentence requirement or 30 years, whichever is less. A person convicted under this statute is required to serve a minimum of two years in prison and is prohibited from release to mandatory supervision. For a criminal found guilty of engaging in organized criminal activity involving the commission of a first-degree felony, his or her conviction may be used to increase the category of the offense for which the person is charged and may require a 15-year minimum sentence. Finally, a person will be required to serve a minimum sentence of 25 years if he or she is convicted of financing, directing, or supervising a criminal street gang by committing or conspiring to commit a felony of the first or second degree.

This bill allows fingerprints collected for a driver's license to be cross-referenced with the criminal database to check for criminal warrants and wanted fugitives.

This bill provides for the use of a driver's license and insurance checkpoints by DPS officers statewide.

As proposed, S.B. 9 amends current law relating to homeland security.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 6 (Section 411.0094, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.252, as follows:

Art. 2.252. VERIFICATION OF IMMIGRATION STATUS OF PERSON CHARGED WITH COMMITTING OFFENSE. (a) Requires the peace officer arresting a person charged with committing an offense or the law enforcement agency that has custody of the person, as applicable, to verify the immigration status of the person by use of the federal Secure Communities program operated by United States Immigration and Customs Enforcement or a successor program.

(b) Requires a peace officer or law enforcement agency conducting an immigration status verification under Subsection (a) to notify United States Immigration and Customs Enforcement if the officer or agency is unable to verify a person's immigration status.

SECTION 2. Amends Section 14, Article 18.21, Code of Criminal Procedure, by adding Subsection (h) to provide that this section does not prohibit the installation and use of a mobile tracking device without an order in the course of a criminal investigation if an order is not required under the Texas Constitution or United States Constitution.

SECTION 3. Amends Section 4(a), Article 37.07, Code of Criminal Procedure, as follows:

(a) Requires the court, in the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is an offense under Section 71.02 (Engaging in Organized Criminal Activity) or 71.023, Penal Code, or an offense listed in Section 3g(a)(1) (relating to a defendant adjudged guilty of certain offenses to which certain provisions do not apply), Article 42.12 (Community Supervision), or if the judgment contains an affirmative finding under Section 3g(a)(2) (relating to a defendant when it is shown that a deadly weapon was used or exhibited during the commission of a felony offense), Article 42.12, unless the defendant has been convicted of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), Penal Code, an offense under Section 22.021 (Aggravated Sexual Assault), Penal Code, that is punishable under Subsection (f) (relating to the minimum term of imprisonment for an offense under this section) of that section, or a capital felony, to charge the jury in writing in certain required language. Makes nonsubstantive changes.

SECTION 4. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0179, as follows:

Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN DRUG CONVICTIONS: LAW ENFORCEMENT FEE. (a) Requires a person convicted of an offense punishable as a misdemeanor under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, to pay \$100 on conviction of the offense.

(b) Requires a person convicted of an offense punishable as a felony under Chapter 481, Health and Safety Code, to pay \$200 on conviction of the offense.

(c) Provides that costs imposed under this article are imposed without regard to whether the defendant is placed on community supervision after being convicted of the offense or receives deferred disposition or deferred adjudication for the offense.

(d) Requires the officer collecting the costs under this article to keep separate records of the money collected and to pay the money to the custodian of the municipal or county treasury.

(e) Requires the custodian of the municipal or county treasury to:

(1) keep records of the amount of money collected under this article that is deposited with the treasury under this article; and

(2) not later than the last day of the first month following each calendar quarter:

(A) pay the money collected under this article during the preceding calendar quarter to the comptroller; or

(B) if, in the calendar quarter, the custodian of the municipal or county treasury did not receive any money attributable to costs paid under this article, file a report with the comptroller stating that fact.

(f) Requires the comptroller of public accounts to deposit the money collected under this article in the state treasury to the credit of the general revenue fund to be used for law enforcement purposes.

SECTION 5. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.0217, as follows:

Sec. 102.0217. ADDITIONAL COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. Requires a person convicted of an offense under Chapter 481, Health and Safety Code, to pay the following under Article 102.0179, Code of Criminal Procedure, in addition to all other costs, to be used for law enforcement purposes:

(1) court cost on conviction of a misdemeanor offense . . . \$100; and

(2) court cost on conviction of a felony offense . . . \$200.

SECTION 6. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0094, as follows:

Sec. 411.0094. AUTOMATIC LICENSE PLATE READER PILOT PROGRAM. (a) Defines, in this section, "automatic license plate reader."

(b) Requires the Department of Public Safety of the State of Texas (DPS) to establish a pilot program in which automatic license plate readers may be installed in law enforcement motor vehicles used by DPS for law enforcement.

(c) Requires that the pilot program include a request for proposal process to select a contractor for the installation of automatic license plate readers.

(d) Requires DPS to adopt rules as necessary to implement the pilot program.

(e) Requires DPS, not later than December 1, 2012, to file a report with the committee in each house of the legislature having primary jurisdiction over homeland security matters. Requires the report to include:

(1) information regarding the use of automatic license plate readers by DPS; and

(2) any other information that would assist the legislature in evaluating the effectiveness of the use of automatic license plate readers by DPS.

(f) Provides that this section expires September 1, 2013.

SECTION 7. Amends Section 411.023, Government Code, by amending Subsection (b) and adding Subsection (g), as follows:

(b) Provides that a special ranger is subject to the orders of the Public Safety Commission (commission) and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law regulating the use of a state highway by a motor vehicle, rather than except that a special ranger may not enforce a law except one designed to protect life and property and may not enforce a law regulating the use of a state highway by a motor vehicle.

(g) Authorizes the commission to call special rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;
- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to DPS during disasters.

SECTION 8. Amends Section 411.024, Government Code, by amending Subsection (b) and adding Subsection (g), as follows:

(b) Provides that a special Texas Ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law regulating the use of a state highway by a motor vehicle, rather than except that a special ranger may not enforce a law except one designed to protect life and property and may not enforce a law regulating the use of a state highway by a motor vehicle.

(g) Authorizes the commission to call special Texas Rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;
- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to DPS during disasters.

SECTION 9. Amends Section 508.145(d), Government Code, to provide that an inmate serving a sentence for an offense described by Section 3g(a)(1)(A) (relating to murder), (C) (relating to indecency with a child), (D) (relating to aggravated kidnapping), (E) (relating to aggravated sexual assault), (F) (relating to aggravated robbery), (G) (relating to an offense under Chapter 481, Health and Safety Code), (H) (relating to sexual assault), (I) (relating to injury to a child, elderly individual, or disabled individual, if the offense is punishable as a first-degree felony and the victim is a child), (J) (relating to sexual performance by a child), or (K) (relating to an offense under Section 15.03, Penal Code, if the offense is punishable as a first-degree felony), Article 42.12, Code of Criminal Procedure, an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article, or an offense under Section 71.02 or

71.023, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years. Makes a nonsubstantive change.

SECTION 10. Amends Section 508.149(a), Government Code, to prohibit an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of certain offenses, including a first degree felony under Section 71.02 or 71.023, Penal Code.

SECTION 11. Reenacts Section 511.0101(a), Government Code, as amended by Chapters 977 (H.B. 3654) and 1215 (S.B. 1009), Acts of the 81st Legislature, Regular Session, 2009, and amends it to require each county to submit to the Commission Jail Standards on or before the fifth day of each month a report containing certain information, including the number of prisoners confined in the county jail on the first day of the month, classified on the basis of certain categories, including prisoners who are not citizens or nationals of the United States and are unlawfully present in the United States according to the terms of the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.), rather than prisoners who are known to be pregnant, and the total cost to the county during the preceding month of housing prisoners described by Subdivision (1)(M) (relating to prisoners who are not citizens or nationals of the United States and are unlawfully present in the United States). Makes nonsubstantive changes.

SECTION 12. Amends Section 481.108, Health and Safety Code, as follows:

Sec. 481.108. PREPARATORY OFFENSES. (a) Creates an exception under Subsection (b).

(b) Provides that the performance of an overt act described by Section 15.02(a)(2) (relating to the conditions under which criminal conspiracy is committed), Penal Code, that is otherwise required to establish criminal conspiracy under that section is not required for purposes of establishing criminal conspiracy with respect to an offense under this chapter.

SECTION 13. Reenacts Section 71.02(b), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, and amends it to provide that, except as provided in Subsections (c) (relating to the degree of seriousness of the criminal conspiracy) and (d) (relating to authorizing a defendant to raise issues regarding voluntary and complete renunciation of an offense or a substantial effort to prevent the commission of the offense), an offense under this section is one category higher than the most serious offense listed in Subsection (a) (relating to committing an offense in a combination or as a member of a criminal street gang) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 15 years.

SECTION 14. Reenacts Section 71.02(c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, to provide that conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) (relating to committing an organized criminal offense and a list of offenses) that the person conspired to commit.

SECTION 15. Amends Section 71.023, Penal Code, as follows:

Sec. 71.023. New heading: DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS. (a) Provides that a person commits an offense if the person knowingly finances, directs, or supervises members of a criminal street gang that commit or conspire to commit a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3) that is punishable as a felony of the first or second degree under Chapter 481, Health and Safety Code.

Deletes existing text providing that 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) Provides that an offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Deletes existing Subsection (c) defining "criminal street gang."

SECTION 16. Amends Section 521.059(b), Transportation Code, to require DPS to authenticate the facial image and thumbprints or fingerprints provided by an applicant for a personal identification certificate, driver's license, or commercial driver's license or permit using image comparison technology to ensure that the applicant meets certain criteria, including that the applicant is not a fugitive from justice, as defined by Section 38.01 (Definitions), Penal Code.

SECTION 17. Amends Chapter 600, Transportation Code, by adding Section 600.005, as follows:

Sec. 600.005. DRIVER'S LICENSE AND EVIDENCE OF FINANCIAL RESPONSIBILITY CHECKPOINTS. (a) Authorizes DPS to establish a program for the purpose of establishing checkpoints to ensure that operators of motor vehicles in this state are not in violation of Section 521.021 (License Required), 522.011 (License or Permit Required; Offense), or 601.051 (Requirement of Financial Responsibility).

(b) Authorizes DPS to establish the checkpoint program in conjunction with local law enforcement authorities. Authorizes DPS and local law enforcement authorities to share the cost of staffing the checkpoints conducted under the checkpoint program established by this section.

(c) Requires DPS to establish procedures to be used in the operation of a checkpoint conducted under the checkpoint program established by this section.

(d) Requires that the procedures for the operation of a checkpoint conducted under the checkpoint program established by this section perform certain actions.

(e) Requires DPS to keep a record of the operation of a checkpoint conducted under the checkpoint program established by this section that contains certain information.

SECTION 18. Makes application of Section 4(a), Article 37.07, Code of Criminal Procedure, Sections 508.145 and 508.149, Government Code, Section 481.108, Health and Safety Code, and Sections 71.02 and 71.023, Penal Code, as amended by this Act, and Article 102.0179, Code of Criminal Procedure, and Section 102.0217, Government Code, as added by this Act, prospective. Provides that, 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 19. Requires a county to submit the first report required by Section 511.0101 (Jail Population Reports), Government Code, as amended by this Act, not later than October 5, 2011.

SECTION 20. Effective date: September 1, 2011.