

BILL ANALYSIS

Senate Research Center

H.B. 11
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Veteran Affairs & Military Installations-S/C Border Security
5/14/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties note that the Department of Public Safety of the State of Texas (DPS) recently launched an operation that increased the number of law enforcement and Texas military personnel along the Texas-Mexico border. According to the parties, this operation has led to discussions regarding the need for a long-term solution to human trafficking and the flow of illegal contraband through the border. The parties are concerned that transnational gangs and perpetrators of organized crime have become entrenched in communities across Texas, threatening the safety of the public and resulting in an increase in the exploitation of human beings for profit and the ruin of many lives through drug addiction.

These parties believe that the state can strengthen the border through, among other things, more stringent penalties for the smuggling of humans and illegal contraband through the border, improved tools to address the counterflow of contraband, enhanced transparency of crime data throughout Texas, and more effective data sharing by law enforcement to connect crimes to identify larger criminal enterprises and pursue stronger penalties against organized crime. H.B. 11 seeks to address these issues and make Texas safer by creating a stronger border.

H.B. 11 amends current law relating to the powers and duties of the Texas Department of Public Safety and the investigation, prosecution, punishment, and prevention of certain offenses and creates an offense and increases a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 10 (Section 411.054, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 2.12, Code of Criminal Procedure, as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. Provides that the following are peace officers:

(1)-(3) Makes no change to these subdivisions;

(4) rangers, officers, and members of the reserve officer corps commissioned by the Public Safety Commission (commission) and the Director of the Department of Public Safety of the State of Texas (director) (DPS);

(5)-(31) Makes no change to these subdivisions;

(32) commission investigators commissioned by the Texas Private Security Board of DPS (board) under Section 1702.061 (General Powers and Duties of Board), rather than 1702.061(f), Occupations Code;

(33)-(36) Makes no change to these subdivisions.

SECTION 2. Amends Section 4, Article 18.20, Code of Criminal Procedure, as follows:

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED. Authorizes a judge of competent jurisdiction to issue an order authorizing interception of wire, oral, or electronic communications only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of certain offenses, including an offense under Section 43.04 (If Defendant is Absent) or 43.05 (Capias Pro Fine Shall Recite), Penal Code. Makes nonsubstantive changes.

SECTION 3. Reenacts Article 59.01(2), Code of Criminal Procedure, as amended by Chapters 427 (S.B. 529) and 1357 (S.B. 1451), Acts of the 83rd Legislature, Regular Session, 2013, and amends it, to redefine "contraband."

SECTION 4. Amends Section 411.0043, Government Code, as follows:

Sec. 411.0043. New heading: TECHNOLOGY POLICY; REVIEW. (a) Creates this subsection from existing text;

(b) Requires DPS to periodically:

(1) review DPS's existing information technology system to determine whether:

(A) the system's security should be upgraded; and

(B) the system provides DPS with the best ability to monitor and investigate criminal activity on the Internet; and

(2) make any necessary improvements to DPS's information technology system.

SECTION 5. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0101, as follows:

Sec. 411.0101. ASSISTANCE TO CERTAIN LOCAL LAW ENFORCEMENT AGENCIES ALONG TEXAS-MEXICO BORDER. Requires DPS, in addition to any other DPS operations in a county along the Texas-Mexico border, to provide assistance with offenses punishable as a third degree felony or higher to a county or municipal law enforcement agency in a county along the Texas-Mexico border on a request from the law enforcement agency for assistance. Provides that the regional commander has discretion to allocate DPS resources as necessary to meet DPS's objectives.

SECTION 6. Amends Subchapter A, Chapter 411, Government Code, by adding Sections 411.0163, as follows:

Sec. 411.0163. HIRING OFFICERS WITH PREVIOUS LAW ENFORCEMENT EXPERIENCE. Authorizes DPS, notwithstanding any other provision of law, to, at the time a commissioned officer is hired, elect to credit up to four years of experience as a peace officer in the state as years of service for the purpose of calculating the officer's salary under Schedule C. Provides that all officers are subject to the one-year probationary period under Section 411.007(g) notwithstanding the officer's rank or salary classification.

SECTION 7. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0164, as follows:

Sec. 411.0164. 50-HOUR WORK WEEK FOR COMMISSIONED OFFICERS ASSIGNED TO THE TEXAS-MEXICO BORDER REGION. Authorizes DPS, notwithstanding any other law, to implement a 10-hour work day and 50-hour work week

for commissioned officers of DPS assigned to a DPS region that includes counties along the Texas-Mexico border.

SECTION 8. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0165, as follows:

Sec. 411.0165. VETERAN APPLICANTS FOR TROOPER TRAINING. Authorizes DPS to accept a person applying to DPS's trooper trainee academy if the person:

- (1) has served four or more years in the United States armed forces as a member of the military police or other security force and received an honorable discharge; and
- (2) meets all other DPS requirements for a commissioned officer.

SECTION 9. Amends Subchapter A, Chapter 411, Government Code, by adding Sections 411.0208 and 411.0209, as follows:

Sec. 411.0208. RESERVE OFFICER CORPS. (a) Authorizes the commission to provide for the establishment of a reserve officer corps consisting of retired or previously commissioned officers of DPS who retired or resigned in good standing.

- (b) Requires the commission to establish qualifications and standards of training for members of the reserve officer corps.
- (c) Authorizes the commission to limit the size of the reserve officer corps.
- (d) Requires the director to appoint the members of the reserve officer corps. Provides that members serve at the director's discretion.
- (e) Authorizes the director to call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist DPS in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the director.

Sec. 411.0209. DEPARTMENT ASSISTANCE AT INTERNATIONAL BORDER CHECKPOINTS. (a) Requires DPS, to prevent the unlawful transfer of contraband from this state to the United Mexican States and other unlawful activity, to conduct a study concerning the feasibility of providing to federal authorities and to local law enforcement authorities working with those federal authorities at international border checkpoints assistance in the interdiction of weapons, bulk currency, stolen vehicles, and other contraband, and of fugitives, being smuggled into the United Mexican States. Requires DPS to also study whether the establishment of international border checkpoints will have a negative impact on toll revenues.

- (b) Authorizes DPS to share with the federal government the cost of staffing any international border checkpoints for the purposes described by this section.
- (c) Requires the director and applicable local law enforcement authorities to adopt procedures as necessary to administer this section.

SECTION 10. Amends Subchapter D, Chapter 411, Government Code, by adding Section 411.054, as follows:

Sec. 411.054. CRIME STATISTICS REPORTING. (a) Requires each local law enforcement agency to:

- (1) implement an incident-based reporting system that meets the reporting requirements of the National Incident-Based Reporting System of the

Uniform Crime Reporting Program of the Federal Bureau of Investigation;
and

(2) use the system described by Subdivision (1) to submit to DPS information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) Requires DPS to adopt rules to implement this section, including rules prescribing the form and manner of the submission of information and statistics, and the frequency of reporting.

(c) Authorizes a local law enforcement agency that is not in compliance with this section and that receives grant funds from DPS or the criminal justice division of the governor's office, notwithstanding any other law, to only use those funds to come into compliance with this section.

(d) Provides that a local law enforcement agency is not required to comply with this section before September 1, 2019.

(e) Provides that Subsection (d) and this subsection expire September 1, 2019.

SECTION 11. Amends Chapter 411, Government Code, by adding Subchapter P, as follows:

SUBCHAPTER P. STATE LAW ENFORCEMENT OPERATIONS OVERSIGHT
COMMITTEE

Sec. 411.431. DEFINITIONS. Defines "border" and "committee."

Sec. 411.432. STATE LAW ENFORCEMENT OPERATIONS OVERSIGHT COMMITTEE. (a) Provides that a State Law Enforcement Operations Oversight Committee (committee) is established to ensure transparency of state operations targeting transnational gang and cartel activity.

(b) Provides that members of the committee are appointed as follows:

- (1) five members of the senate appointed by the lieutenant governor;
- (2) five members of the house of representatives appointed by the speaker of the house of representatives; and
- (3) one public member appointed by the governor.

(c) Provides that a member of the committee serves at the will of the appointing official.

(d) Requires the lieutenant governor and the speaker of the house of representatives to appoint the chair of the committee on an alternating basis. Provides that the chair of the committee serves a one-year term that expires September 1 of each year.

(e) Provides that a member of the committee is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee.

(f) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the committee.

Sec. 411.433. POWERS AND DUTIES. (a) Provides that the committee has the powers and duties of a general investigating committee under Sections 301.020 (Powers and Duties of General Investigating Committees), 301.024 (Process), and 301.028

(Cooperation of Other Agencies), including access to confidential and law enforcement sensitive information.

(b) Provides that the committee:

(1) shall monitor and regularly report to the legislature on the progress of state operations targeting transnational gang and cartel activity, including monitoring conditions at the local level;

(2) may request from the Department of Public Safety of the State of Texas (DPS), the Parks and Wildlife Department (TPWD), and the Texas military forces reports and any other information related to border operations considered necessary by the committee;

(3) if necessary, shall cooperate with local and federal officials to perform the committee's duties; and

(4) shall meet monthly to carry out the committee's duties.

(c) Authorizes the committee to meet and consult with and advise local governments and federal authorities.

Sec. 411.434. REPORTS TO COMMITTEE. (a) Requires DPS, TPWD, and the Texas military forces to submit monthly reports to the committee that include certain information as set forth.

(b) Requires DPS, TPWD, and the Texas military forces to:

(1) brief the committee in person at the request of the committee; and

(2) respond to any committee request for reports or other information under Section 411.433.

SECTION 12. Reenacts Section 772.007, Government Code, as follows:

Sec. 772.007. TEXAS ANTI-GANG GRANT PROGRAM. (a) Requires the criminal justice division in the Office of the Governor of the State of Texas established under Section 772.006 (Governor's Criminal Justice Division), Government Code, 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.

(b) Requires that the grant program administered under this section be directed toward regions of this state that have demonstrably high levels of gang violence.

(c) Requires the criminal justice division to 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) Requires the criminal justice division to include in the biennial report required by Section 772.006(a)(9) (relating to submission of a biennial report to the legislature) detailed reporting of the results and performance of the grant program administered under this section.

(e) Authorizes the criminal justice division to use any revenue available for purposes of this section.

SECTION 13. Amends Chapter 362, Local Government Code, by adding Section 362.005, as follows:

Sec. 362.005. TEXAS TRANSNATIONAL INTELLIGENCE CENTER. (a) Requires the sheriff's department of a county with a population of at least 700,000 but not more than 800,000 that borders the Texas-Mexico border and the police department of the municipality having the largest population in that county to jointly establish and operate the Texas Transnational Intelligence Center (center) as a central repository of real-time intelligence relating to criminal activity in the counties along the Texas-Mexico border. Requires DPS to assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(b) Requires each law enforcement agency in a county located along the Texas-Mexico border and the Texas Alcoholic Beverage Commission (TABC) and TPWD to report to the center intelligence regarding criminal activity in the law enforcement agency's jurisdiction, including details on kidnappings, home invasions, and incidents of impersonation of law enforcement officers.

(c) Requires that the intelligence in the center be made available to each law enforcement agency in the state and TABC and TPWD.

(d) Requires the center to comply with Section 421.085 (Privacy Policy Required), Government Code, and the rules relating to that section.

SECTION 14. Amends Section 20.05, Penal Code, as follows:

Sec. 20.05. SMUGGLING OF PERSONS (a) Provides that a person commits an offense if the person, with the intent to obtain a pecuniary benefit, knowingly, rather than intentionally:

(1) uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to conceal the individual from a peace officer or special investigator; or flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; or

(2) encourages or induces an individual to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection.

Makes nonsubstantive changes.

(b) Provides that an offense under this section is a felony of the third degree, except that the offense is:

(1) a felony of the second degree if:

(A) the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or

(B) the smuggled individual is a child younger than 18 years of age at the time of the offense; or

(2) a felony of the first degree if:

(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011 (Sexual Assault), or aggravated sexual assault, as defined by Section 22.021 (Aggravated Sexual Assault); or

(B) the smuggled individual suffered serious bodily injury or death.

Deletes existing text providing that, except as provided by Subsection (c), an offense under this section is a state jail felony, and an offense under this section is a felony of the third degree if the actor commits the offense for pecuniary benefit in a manner that creates a substantial likelihood that the transported individual will suffer serious bodily injury or death.

(c) Redesignates existing Subsection (d) as Subsection (c). Provides that it is an affirmative defense to prosecution, other than a prosecution to which Subsections (b)(1)(A) or (b)(2) apply, under this section that the actor is related to the smuggled, rather than transported, individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(d) Redesignates existing Subsection (e) as Subsection (d) and makes no further change.

SECTION 15. Amends Chapter 20, Penal Code, by adding Section 20.06, as follows:

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) Provides that a person commits an offense if the person engages two or more times in conduct that constitutes an offense under Section 20.05 (Smuggling of Persons).

(b) Provides that, if a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20.05 or on which exact date the defendant engaged in that conduct. Requires the jury to agree unanimously that the defendant engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) Prohibits a defendant from being convicted of the offense under Section 20.05 in the same criminal action as the offense under Subsection (a) if the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, unless the offense under Section 20.05:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) Prohibits a defendant from being charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20.05 is alleged to have been committed against the same victim.

(e) Provides that, except as provided by Subsections (f) and (g), an offense under this section is a felony of the second degree.

(f) Provides that an offense under this section is a felony of the first degree if:

(1) the conduct constituting an offense under Section 20.05 is conducted in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or

(2) the smuggled individual is a child younger than 18 years of age at the time of the offense.

(g) Provides that an offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice (TDCJ) for life or for any term of not more than 99 years or less than 25 years, if:

(1) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011 , or aggravated sexual assault, as defined by Section 22.021; or

(2) the smuggled individual suffered serious bodily injury or death.

SECTION 16. Amends Sections 71.02(a) and (b), Penal Code, as follows:

(a) Provides that 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 certain offenses as set forth, including any offense under Section 20.05 or 20.06. Makes no further change to this subsection.

(b) Provides that, except as provided in Subsections (c) and (d), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in TDCJ for:

(1) life without parole, under certain conditions;

(2) life or for any term of not more than 99 years or less than 30 years if the most serious offense is an offense under Section 20.06 that is punishable under Subsection (g) of that section; or

(3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1) or (2).

Makes nonsubstantive changes.

SECTION 17. Provides that the change in law made by this Act to Section 4, Article 18.20, Code of Criminal Procedure, applies only to an application for an interception order filed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 18. Requires DPS to adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

SECTION 19. Requires the appointing officials described by Section 411.432, Government Code, as added by this Act, to appoint the members of the State Law Enforcement Operations Oversight Committee established under that section as soon as possible after the effective date of this Act, but not later than September 1, 2015. Requires the speaker of the house of representatives to make the first appointment to chair the committee as provided by that section.

SECTION 20. Provides that the changes in law made by this Act to Sections 20.05 and 71.02, Penal Code, apply only to an offense committed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 21. Provides that, to the extent of any conflict, this Act prevails over another Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 22. Effective date: September 1, 2015.