

BILL ANALYSIS

Senate Research Center

C.S.H.B. 11
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Veteran Affairs & Military Installations-S/C Border Security
5/21/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The security and management of our southern border is the constitutionally-mandated duty of the federal government. In the absence of federal action, the State of Texas has shouldered the burden of stopping human trafficking, the smuggling of illegal drugs and weapons, and the potential influx of dangerous criminals and terrorists. H.B. 11 seeks to help the Department of Public Safety of the State of Texas (DPS) sustain and appropriately expand their successful efforts to tackle this problem.

H.B. 11: Keeps the national guard on the border until DPS has the personnel to fully secure the border region without the assistance of the Texas National Guard.

Adds aggravated promotion of prostitution and compelling prostitution as an enumerated offense in the state wiretap statute.

Requires the attorney general to establish a transnational and organized crime divisions to address matters related to border security and organized crime.

Directs DPS to periodically review the department's existing information technology system and to make any necessary improvements.

Authorizes DPS, at the time a commissioned officer is hired, to elect to credit up to four years of experience as a peace officer in Texas as years of services for the purpose of calculating the officer's salary under Schedule C.

Authorizes DPS to implement a 10-hour workday and 50-hour workweek statewide for all commissioner officers.

Creates a new multiagency crime information center in the Rio Grande Valley that will be operated by local law enforcement and DPS called the Texas Transnational Intelligence Center. The bill requires DPS to assist the county sheriff's department and the municipal police department in the establishment and operation of the center. It requires each law enforcement agency in a county located along the Texas-Mexico border, a county with a federal checkpoint, the Texas Alcohol and Beverage Commission (TABC), and the Texas Parks and Wildlife Department (TPWD) to report certain criminal activity to the center. The information reported to the center must be made available to each law enforcement agency in Texas, as well as to TABC and TPWD.

Creates a DPS Officer Reserve Corps comprised of retired DPS officers who will assist with background investigations, sex offender compliance checks and other duties.

Requires DPS to assist federal authorities in setting up southbound check points.

Ensures uniformity and transparency of crime data between law enforcement agencies through the adoption of the National Incident Based Reporting System (NIBRS) for certain law enforcement agencies.

Authorizes the Texas Facilities Commission (TFC) to build a multiuse training facility to be used by DPS, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government, for training purposes.

The bill reiterates that the criminal justice division 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. It also reiterates that it should be a priority of the state to issue these grants to regions of this state that have demonstrably high levels of gang violence.

Amends the Penal Code to change the conduct that constitutes a smuggling of persons offense. The bill also creates the third degree felony offense of continuous smuggling of persons.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 11 (Section 411.0141, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends 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)-(24) Makes no change to these subdivisions;

(25) Redesignates existing Subdivision (26) as Subdivision (25) and deletes existing text providing that a peace officer is an officer employed by the Department of State Health Services (DSHS) under Section 431.2471, Health and Safety Code;

Redesignates existing Subdivisions (27), (28), (29), (30), and (31) as Subdivisions (26), (27), (28), (29), and (30);

(31) Redesignates existing Subdivision (32) as Subdivision (31); 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;

Redesignates existing Subdivisions (33), (34), (35), and (36) as Subdivisions (32), (33), (34), and (35).

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 Subchapter B, Chapter 402, Government Code, by adding Section 402.038, as follows:

Sec. 402.038. TRANSNATIONAL AND ORGANIZED CRIME DIVISION. (a) Requires the Office of the Attorney General (OAG) to establish a transnational and organized crime division (division).

(b) Requires the division, to address matters related to border security and organized crime, to:

(1) establish within the division a prosecution unit to provide critical assistance to local prosecutors;

(2) using existing funds, establish within the division a trafficking of persons unit to:

(A) assist local law enforcement agencies and local prosecutors in investigating and prosecuting trafficking of persons and related crimes; and

(B) work with the appropriate local and state agencies to identify victims of trafficking of persons and to provide the types of assistance available for those victims under Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure; and

(3) develop initiatives to provide greater state assistance, support, and coordination among state law enforcement agencies, local law enforcement agencies, and local prosecutors.

(c) Requires that prosecution assistance provided by the division under this section be in accordance with the assistance authorized under Section 402.028.

SECTION 5. Amends Section 411.0043, Government Code, as follows:

Sec. 411.0043. New heading: TECHNOLOGY POLICY; REVIEW. (a) Creates this subsection from existing text and makes no further change.

(b) Requires that the Department of Public Safety of the State of Texas (DPS) periodically:

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

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

(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 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. Authorizes DPS, notwithstanding any other law, to implement a 10-hour work day and 50-hour work week for commissioned officers of DPS.

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 implement a strategy for 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.

- (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 of public safety 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. INCIDENT-BASED CRIME STATISTICS REPORTING GOAL. (a) Requires DPS to establish a goal that, not later than September 1, 2019, all local law enforcement agencies:

(1) will have implemented 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) will 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, not later than January 1, 2017, to submit a report to the legislature that identifies the number of local law enforcement agencies that have implemented the system described by Subsection (a).

SECTION 11. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0141, as follows:

Sec. 411.0141. MULTIUSE TRAINING FACILITY. (a) Requires the Texas Facilities Commission (TFC) to construct a multiuse training facility to be used by DPS, the Texas military forces, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government, for training purposes.

(b) Requires TFC, with the assistance of DPS, to locate and acquire real property for the purpose of constructing the training facility. Authorizes the governing body of a county or municipality, on behalf of the county or municipality, to donate real property to DPS for the training facility. Authorizes the donation to be in fee simple or otherwise.

(c) Requires DPS, with the assistance of TFC, to design the training facility.

(d) Requires TFC, on completion of the construction of the training facility, to transfer ownership of the training facility, including the real property and buildings, to DPS.

(e) Requires DPS to manage the training facility and authorizes DPS to adopt rules necessary to implement this section. Requires DPS to make the training facility available for use by DPS, the Texas military forces, county and municipal law enforcement agencies, and any other military or law enforcement agency, including agencies of the federal government. Authorizes DPS to set and collect fees for the use of the training facility.

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:

(1) autopsies in which the person's death is likely connected to transnational criminal activity;

(2) criminal activity in the counties along the Texas-Mexico border and certain other counties; and

(3) other transnational criminal activity in the state.

(b) Requires DPS to assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(c) Requires each law enforcement agency in a county located along the Texas-Mexico border or in a county that contains a federal checkpoint 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. Requires the Texas Alcoholic Beverage Commission (TABC) and the Texas Parks and Wildlife Department (TPWD) to report to the center intelligence regarding transnational criminal activity in the agency's jurisdiction.

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

(e) 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 of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) or (b)(2), 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, during a period that is 10 or more days in duration, 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, during a period that is 10 or more days in duration, 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 OAG, not later than December 1, 2015, to establish the transnational and organized crime division as required by Section 402.038, Government Code, as added by this Act.

SECTION 19. 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. Provides that 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. 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 20. 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 21. This Act takes effect September 1, 2015.