

BILL ANALYSIS

C.S.H.B. 11
By: Bonnen, Dennis
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the Department of Public Safety 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. C.S.H.B. 11 seeks to address these issues and make Texas safer by creating a stronger border.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 7 of this bill.

ANALYSIS

C.S.H.B. 11 amends the Government Code to authorize the Department of Public Safety (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 service for the purpose of calculating the officer's salary under Schedule C. The bill establishes that, notwithstanding an officer's rank or salary classification, all DPS officers are subject to a one-year probationary period as specified by statute for DPS officers and employees. The bill authorizes the Public Safety Commission to provide for the establishment of a reserve officer corps consisting of retired or previously commissioned DPS officers. The bill requires the commission to establish qualifications and standards of training for members of the reserve officer corps and authorizes the commission to limit the size of the reserve officer corps. The bill requires the public safety director of the Department of Public Safety to appoint the members of the reserve officer corps and establishes that members serve at the director's discretion. The bill 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.

C.S.H.B. 11 requires DPS, for purposes of preventing the unlawful transfer of contraband from Texas to the United Mexican States and other unlawful activities, to investigate the feasibility of providing to 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. The bill authorizes DPS to share with the federal government the cost of staffing any international border checkpoints for such purposes. The bill requires the public safety director to adopt procedures as necessary to administer the bill's provisions relating to DPS assistance at international border checkpoints.

C.S.H.B. 11 requires each local law enforcement agency to 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 to use that system to submit to DPS information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency. The bill requires DPS to adopt rules, not later than December 31, 2015, to implement such crime statistics reporting requirements. The bill limits the use of grant funds that a local law enforcement agency not in compliance with such reporting requirements receives from DPS or the criminal justice division of the governor's office to achieving compliance with the reporting requirements. The bill, in a temporary provision set to expire September 1, 2019, establishes that a local law enforcement agency is not required to comply with the reporting requirements before September 1, 2019.

C.S.H.B. 11 sets out a provision reenacting the statutory provision providing for the administration of the Texas anti-gang grant program by the governor's criminal justice division.

C.S.H.B. 11 requires DPS to periodically review its existing information technology system to determine whether the system's security should be upgraded and whether the system provides DPS with the best ability to monitor and investigate criminal activity on the Internet and requires DPS to periodically make any necessary improvements to that information technology system.

C.S.H.B. 11 amends the Local Government Code to require 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 as a central repository of real-time information relating to criminal activity in the counties along the Texas-Mexico border. The bill requires DPS to assist the county sheriff's department and the municipal police department in the establishment and operation of the center. The bill requires each law enforcement agency in a county located along the Texas-Mexico border, the Texas Alcoholic Beverage Commission (TABC), and the Parks and Wildlife Department (TPWD) to report to the center information regarding criminal activity in the law enforcement agency's jurisdiction, including information on kidnappings, home invasions, and incidents of impersonation of law enforcement officers. The bill requires the information in the center to be made available to each law enforcement agency in Texas and to TABC and TPWD.

C.S.H.B. 11 amends the Penal Code to change the conduct that constitutes a smuggling of persons offense from the conduct of a person who intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to conceal the individual from a peace officer or special investigator or to flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor to the conduct of a person who, with the intent to obtain a pecuniary benefit, knowingly 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 to flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor or, with the intent to obtain a pecuniary benefit, knowingly encourages or induces an individual to enter or remain

in the United States in violation of federal law by concealing, harboring, or shielding that person from detection. The bill increases the penalty for the commission of a smuggling of persons offense from a state jail felony to a third degree felony. The bill enhances the penalty for the commission of a smuggling of persons offense from a third degree felony to a second degree felony if 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 the smuggled individual is a child younger than 18 years of age at the time of the offense. The bill enhances the penalty for the commission of a smuggling of persons offense from a third degree felony to a first degree felony if 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 or aggravated sexual assault or if the smuggled individual suffered serious bodily injury or death. The bill disqualifies the affirmative defense to prosecution for a smuggling of persons offense for an actor that is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity if the penalty for the offense has been enhanced to a first degree felony or if the penalty for the offense has been enhanced to a second degree felony because the commission of the offense is in a manner that creates a substantial likelihood that the smuggled individual will suffer seriously bodily injury or death.

C.S.H.B. 11 creates the second degree felony offense of continuous smuggling of persons for a person who, during a period that is 30 or more days in duration, engages two or more times in conduct that constitutes a smuggling of persons offense. The bill establishes 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 a smuggling of persons offense or on which exact date the defendant engaged in that conduct. The bill requires the jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged two or more times in conduct that constitutes a smuggling of persons offense. The bill prohibits the conviction of a defendant for a smuggling of persons offense in the same criminal action as a continuous smuggling of persons offense, if the victim of those offenses is the same, unless the smuggling of persons offense is charged in the alternative, occurred outside the period in which the offense alleged was committed, or is considered by the trier of fact to be a lesser included offense of the offense alleged. The bill prohibits a defendant from being charged with more than one count of a continuous smuggling of persons offense if all of the conduct that constitutes a smuggling of persons offense is alleged to have been committed against the same victim.

C.S.H.B. 11 enhances the penalty for a continuous smuggling of persons offense from a second degree felony to a first degree felony if the conduct constituting a smuggling of persons offense is conducted in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death or the smuggled individual is a child younger than 18 years of age at the time of the offense. The bill enhances the penalty for a continuous smuggling of persons offense from a second degree felony to a first degree felony, 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 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 or aggravated sexual assault or the smuggled individual suffered serious bodily injury or death.

C.S.H.B. 11 includes any offense that is a continuous smuggling of persons offense among the conduct that constitutes engaging in organized criminal activity. The bill enhances the penalty for conduct that constitutes engaging in organized criminal activity to a first degree felony punishable by imprisonment in TDCJ for life or for any term of not more than 99 years or less than 30 years if the most serious offense constituting the offense of engaging in organized criminal activity is a specified continuous smuggling of persons offense.

C.S.H.B. 11 amends the Code of Criminal Procedure to add members of the reserve officer corps commissioned by the Public Safety Commission and public safety director to the list of persons who are considered peace officers. The bill includes compelling prostitution and the aggravated

promotion of prostitution among the offenses for which a judge of competent jurisdiction, under certain conditions, may issue an order authorizing interception of wire, oral, or electronic communications. The bill includes as contraband subject to seizure and forfeiture under state law property of any nature, including real, personal, tangible, or intangible, that is used or intended to be used in the commission of a continuous smuggling of persons offense.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 11 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Article 2.12, Code of Criminal Procedure, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 4, Article 18.20, Code of Criminal Procedure, is amended.	SECTION 2. Same as introduced version.
SECTION 3. 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, is reenacted and amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 411.0043, Government Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 411.007(g), Government Code, is amended to read as follows: (g) <u>Except as provided by Section 411.0164,</u> a [A] noncommissioned employee inducted into the service of the department is on probation for the first one year of service, and an officer is on probation from the date the officer is inducted into the service of the department until the anniversary of the date the officer is commissioned. At any time during the probationary period, an officer or employee may be discharged if the director, with the advice and consent of the commission, finds the officer or employee to be unsuitable for the work.	No equivalent provision, but see SECTION 5 below

SECTION 6. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0163 and 411.0164 to read as follows:

Sec. 411.0163. 50-HOUR WORK WEEK. Notwithstanding any other law, for a commissioned officer of the department assigned to a department region that includes counties along the Texas-Mexico border, 10 hours of work in a calendar day constitutes a day's work and 50 hours of work in a week constitutes a week's work.

Sec. 411.0164. HIRING OFFICERS WITH PREVIOUS LAW ENFORCEMENT EXPERIENCE. Notwithstanding any other provision of law, the department may start a commissioned officer in the position of Trooper II if the officer has at least four years of experience as a peace officer in the state.

See SECTION 5 above.

SECTION 7. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0208 and 411.0209 to read as follows:

Sec. 411.0208. RESERVE OFFICER CORPS. (a) The commission may provide for the establishment of a reserve officer corps consisting of retired or previously commissioned officers of the department. (b) The commission shall establish qualifications and standards of training for members of the reserve officer corps. (c) The commission may limit the size of the reserve officer corps. (d) The director shall appoint the members of the reserve officer corps. Members serve at the director's discretion. (e) The director may call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist the department in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the

SECTION 5. Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.0163 to read as follows:

Sec. 411.0163. HIRING OFFICERS WITH PREVIOUS LAW ENFORCEMENT EXPERIENCE. Notwithstanding any other provision of law, the department may, 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. All officers are subject to the one-year probationary period under Section 411.007(g) notwithstanding the officer's rank or salary classification.

SECTION 6. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0208 and 411.0209 to read as follows:

Sec. 411.0208. RESERVE OFFICER CORPS. (a) The commission may provide for the establishment of a reserve officer corps consisting of retired or previously commissioned officers of the department. (b) The commission shall establish qualifications and standards of training for members of the reserve officer corps. (c) The commission may limit the size of the reserve officer corps. (d) The director shall appoint the members of the reserve officer corps. Members serve at the director's discretion. (e) The director may call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist the department in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the

director.

Sec. 411.0209. INTERNATIONAL BORDER CHECKPOINTS. (a) To prevent human trafficking and the unlawful transfer of firearms and bulk currency from this state to the United Mexican States, the department shall investigate the feasibility of assisting federal authorities in establishing checkpoints along the international border of this state for the purpose of conducting inspections of vehicles leaving this state and entering the United Mexican States. If the department determines that assistance to be feasible, the department shall cooperate with appropriate federal agencies to set up the checkpoints.

(b) A checkpoint described by Subsection (a) must be:

(1) located at or within 250 yards of a federally designated crossing facility located at or near the actual boundary between this state and the United Mexican States;

(2) located on a public highway or street leading directly to an international border crossing; and

(3) designed to stop only traffic leaving this state and entering the United Mexican States.

(c) A peace officer employed by the department may not conduct an inspection of a vehicle under this section unless the officer has reasonable suspicion or probable cause to believe that a passenger in the vehicle has violated Chapter 20A or Section 34.02 or 46.14, Penal Code, or 18 U.S.C. Section 554, 922, 1589, 1590, 1591, 1592, or 1956 or 31 U.S.C. Section 5332.

(d) The department and local law enforcement authorities may share with the federal government the cost of staffing any checkpoints established as described by this section.

(e) The department shall establish procedures governing the encounter between the driver and the peace officers operating the checkpoint that ensure that any intrusion on the driver is minimized and that the inquiries made are reasonably

director.

Sec. 411.0209. DEPARTMENT ASSISTANCE AT INTERNATIONAL BORDER CHECKPOINTS. (a) To prevent the unlawful transfer of contraband from this state to the United Mexican States and other unlawful activity, the department shall investigate the feasibility of providing to 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) The department may share with the federal government the cost of staffing any international border checkpoints for the purposes described by this section.

related to the purpose of the checkpoint.

(f) If necessary to implement this section, the attorney general, subject to approval by the governor, shall enter into an agreement under 8 U.S.C. Section 1357(g) with the United States Office of the Attorney General or other appropriate federal agency.

(g) An agreement entered into under Subsection (f) must be signed on behalf of this state by the attorney general of this state and the governor of this state and as otherwise required by the appropriate federal agency.

(h) A law enforcement agency may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of a checkpoint or the performance of inspections under this section.

(i) The director shall adopt rules as necessary to administer this section.

SECTION 8. Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.054 to read as follows:

Sec. 411.054. CRIME STATISTICS REPORTING. (a) Each local law enforcement agency shall:

(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 the department information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) The department shall adopt rules to implement this section, including rules prescribing:

(1) the form and manner of the submission of information and statistics; and

(2) the frequency of reporting.

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

(c) The director shall adopt procedures as necessary to administer this section.

SECTION 7. Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.054 to read as follows:

Sec. 411.054. CRIME STATISTICS REPORTING. (a) Each local law enforcement agency shall:

(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 the department information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) The department shall adopt rules to implement this section, including rules prescribing:

(1) the form and manner of the submission of information and statistics; and

(2) the frequency of reporting.

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

(d) A local law enforcement agency is not

required to comply with this section before September 1, 2019.
(e) Subsection (d) and this subsection expire September 1, 2019.

No equivalent provision.

SECTION 8. Section 772.007, Government Code, is reenacted 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 9. Chapter 362, Local Government Code, is amended by adding Section 362.005 to read as follows:

Sec. 362.005. SOUTH TEXAS BORDER CRIME INFORMATION CENTER. (a) The sheriff's department of the county having the largest population that borders the Texas-Mexico border and the police department of the municipality having the largest population in that county shall jointly establish and operate the South Texas Border Crime Information Center as a central repository of information relating to criminal activity in the counties along the Texas-Mexico border. The Texas Department of Public Safety shall assist the county sheriff's department and the municipal police department in the

SECTION 9. Chapter 362, Local Government Code, is amended by adding Section 362.005 to read as follows:

Sec. 362.005. TEXAS TRANSNATIONAL INTELLIGENCE CENTER. (a) 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 shall jointly establish and operate the Texas Transnational Intelligence Center as a central repository of real-time information relating to criminal activity in the counties along the Texas-Mexico border. The Texas Department of Public Safety shall assist the county sheriff's department and the municipal police department in the

establishment and operation of the center.
(b) Each law enforcement agency in a county located along the Texas-Mexico border shall report to the South Texas Border Crime Information Center information regarding criminal activity in the law enforcement agency's jurisdiction, including information on kidnappings, home invasions, and incidents of impersonation of law enforcement officers.

(c) The information in the South Texas Border Crime Information Center shall be made available to each law enforcement agency in the state.

SECTION 10. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. SMUGGLING OF PERSONS.

(a) A person commits an offense if the person recklessly [~~intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:~~

(1) conceals, harbors, or shields from detection a person who is present in this country in violation of federal law [~~conceal the individual from a peace officer or special investigator]; or~~

(2) encourages or induces a person to enter or remain in this country in violation of federal law [~~flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor].~~

(b) An [~~Except as provided by Subsection (e), an~~] offense under this section is a state jail felony, except that the[~~:-~~

[~~(c) An~~] offense [under this section] is:

(1) a felony of the third degree if the actor commits the offense [:

[~~(1)~~] for pecuniary benefit; [~~or~~]

(2) a felony of the second degree if:

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

establishment and operation of the center.

(b) Each law enforcement agency in a county located along the Texas-Mexico border and the Texas Alcoholic Beverage Commission and Parks and Wildlife Department shall report to the Texas Transnational Intelligence Center information regarding criminal activity in the law enforcement agency's jurisdiction, including information on kidnappings, home invasions, and incidents of impersonation of law enforcement officers.

(c) The information in the Texas Transnational Intelligence Center shall be made available to each law enforcement agency in the state and the Texas Alcoholic Beverage Commission and Parks and Wildlife Department.

SECTION 10. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. SMUGGLING OF PERSONS.

(a) A person commits an offense if the person, with the intent to obtain a pecuniary benefit, knowingly:

(1) [~~intentionally~~] uses a motor vehicle, aircraft, [~~or~~] watercraft, or other means of conveyance to transport an individual with the intent to:

(A) [~~(1)~~] conceal the individual from a peace officer or special investigator; or

(B) [~~(2)~~] 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.

(b) An [~~Except as provided by Subsection (e), an~~] offense under this section is [~~a state jail felony.~~

[~~(c) An offense under this section is~~] a felony of the third degree, except that [~~if the actor commits~~] the offense is:

(1) a felony of the second degree if:

(A) the actor commits the offense [~~for pecuniary benefit; or~~

[~~(2)~~] in a manner that creates a substantial likelihood that the smuggled [~~transported~~]

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

(3) 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, or aggravated sexual assault, as defined by Section 22.021; or

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

~~(c) [(d) It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.~~

[(e)] If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 11. Chapter 20, Penal Code, is amended by adding Section 20.06 to read as follows:

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) 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. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20.05 in the same criminal action as the offense under

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, or aggravated sexual assault, as defined by Section 22.021; or

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

~~(c) [(d)] 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 transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.~~

(d) [(e)] If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 11. Chapter 20, Penal Code, is amended by adding Section 20.06 to read as follows:

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) 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. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20.05 in the same criminal action as the offense under

Subsection (a), 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) A defendant may not be 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) Except as provided by Subsections (f) and (g), an offense under this section is a felony of the third degree.

(f) 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) 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, 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 12. 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 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:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary,

Subsection (a), 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) A defendant may not be 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) Except as provided by Subsections (f), (g), and (h), an offense under this section is a felony of the second degree.

(f) 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) 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, 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 12. Sections 71.02(a) and (b), Penal Code, are 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 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:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft,

theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, 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;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(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, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or 20.06; or

(18) any offense classified as a felony under the Tax Code.

aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, 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;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(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, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or 20.06; or

(18) any offense classified as a felony under the Tax Code.

(b) 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 the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense; ~~or~~

(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 (h) 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).

SECTION 13. 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. An application for an interception order filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 13. Same as introduced version.

SECTION 14. (a) The Department of Public Safety shall adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

SECTION 14. The Department of Public Safety shall adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

(b) A local law enforcement agency is not required to comply with Section 411.054, Government Code, as added by this Act, before September 1, 2019.

(c) The Department of Public Safety or the criminal justice division of the governor's office may not deny a grant to a local law enforcement agency on the grounds that the

local law enforcement agency is not in compliance with Section 411.054, Government Code, as added by this Act, before September 1, 2019.

SECTION 15. 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. 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 16. 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 17. This Act takes effect September 1, 2015.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.