

## **BILL ANALYSIS**

C.S.H.B. 12  
By: Longoria  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties confirm the need to codify in statute the border prosecution unit that was created through Governor Perry's office to prosecute border crime. These parties note that the unit has formed a strategic partnership with the Department of Public Safety (DPS) to achieve its goal of detecting threats localized to a particular region, county, or community and engaging the appropriate resources to dismantle and disrupt the criminal enterprises causing those threats. Interested parties emphasize the success of the unit as a model for promoting efficient collaboration with DPS as well as federal and local partners. C.S.H.B. 12 seeks to help facilitate the unit's prosecution of border crimes and to continue that collaboration.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 12 amends the Government Code to establish the border prosecution unit as an independent unit that cooperates with and supports attorneys in a border region who represent the state in the prosecution of felony border crimes. The bill establishes that the unit is governed by a board of directors composed of specified prosecuting attorneys whose service on the board must be in addition to the attorneys' other duties assigned by law. The bill requires the board to meet annually for the purpose of electing the executive board and approving or amending bylaws governing the unit, establishes that a majority of the board members constitutes a quorum for the transaction of business, and requires the board to approve any action by a majority vote of the members present. The bill requires the board to divide the border region into three subregions and to set the boundaries of the subregions as necessary and requires each board member to enter into a memorandum of understanding with the unit to collaborate and cooperate in the prosecution of border crime.

C.S.H.B. 12 establishes that the board of directors of the border prosecution unit is governed by an executive board composed of seven members elected by the membership of the board of directors and prescribes requirements regarding that election and executive board member terms and vacancies. The bill requires the executive board to conduct the business of the unit, establishes that a majority of executive board members constitutes a quorum for the purpose of transacting business, and requires the executive board to approve any action by a majority vote of the members present. The bill provides for the election, terms, and service of a presiding officer and an assistant presiding officer of the executive board and for the filling of a vacancy in

those offices. The bill prohibits a position on the board of directors or the executive board from being construed to be a civil office of emolument for any purpose and entitles a member of the board of directors or executive board to reimbursement for necessary expenses incurred in carrying out the duties and responsibilities of a member of the respective board, if applicable, as provided by the General Appropriations Act but not to compensation for service on the respective board. The bill authorizes the executive board to employ a person to serve as administrator of the border prosecution unit and requires the executive board to set the salary and benefits of the administrator. The bill requires the executive board to employ and set the salary and benefits of one or more attorneys as regional counsel for each subregion of a border region. The bill authorizes the executive board to employ additional employees necessary for the discharge of the unit's duties and requires the executive board to determine the compensation of those employees.

C.S.H.B. 12 requires the border prosecution unit, in collaboration with the Department of Public Safety (DPS), to assist and support the members of the board of directors in the prosecution of border crime. The bill requires the unit to solicit requests for proposals from each board member to provide funding for the member to employ one or more border prosecuting attorneys, to employ investigative and support staff, and to provide other resources. The bill requires the unit to review and make recommendations to the criminal justice division of the governor's office regarding the distribution of grant money under the prosecution of border crime grant program. The bill requires a board member who employs a border prosecuting attorney or investigative or support staff to set the attorney or staff member's salary and benefits. The bill authorizes the unit to solicit requests for proposals from, and make recommendations regarding distribution of grant money to, the prosecuting attorney who serves a county or counties that are not located in the border region if DPS determines that the county or counties are significantly affected by border crime.

C.S.H.B. 12 requires the border prosecution unit to facilitate the coordination and collaboration of the members of the board of directors with the regional counsel employed by the unit and with other law enforcement agencies, including DPS, in the investigation and prosecution of border crime and to develop a nonexclusive list of offenses not included in the bill's definition of "border crime" that constitute border crime to provide guidance and enhance uniformity in the investigation and prosecution of border crime. The bill requires the unit to serve as a clearinghouse for information related to the investigation and prosecution of border crime, to develop best practices and guidelines, and to assist in developing a training program and providing training to prosecuting attorneys and law enforcement agencies in the border region on specific issues and techniques relating to the investigation and prosecution of border crime.

C.S.H.B. 12 requires an attorney employed as regional counsel for the border prosecution unit to assist the members of the board of directors, border prosecuting attorneys, and other regional counsel, as needed, in the prosecution of border crime, the screening of cases involving border crime, the presenting of cases involving border crime to a grand jury, and the preparation and trial of cases involving border crime. The bill requires the regional counsel to serve as a liaison between the members of the board and other criminal justice entities by working closely with those entities, as needed, to coordinate and assist in the investigation and prosecution of border crime and by attending multiagency task force hearings and meetings held by federal, state, and local prosecutors and law enforcement agencies on the investigation and prosecution of border crime. The bill requires the regional counsel to provide legal and technical assistance to law enforcement agencies investigating border crime and to border prosecuting attorneys and to coordinate training with the unit for members of the board and law enforcement agencies. The bill authorizes the unit to apply for and accept grants under federal and state programs and to apply for and accept gifts, grants, and donations from any organization exempted from federal income tax under certain provisions of the federal Internal Revenue Code of 1986 for the purposes of funding any activity of the unit.

C.S.H.B. 12 repeals Section 772.0071(d), Government Code, authorizing undedicated and

unobligated funds in the operators and chauffeurs license account to be appropriated only to the criminal justice division for the purposes of grants under the prosecution of border crime grant program.

**EFFECTIVE DATE**

September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 12 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

SECTION 1. Chapter 41, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. BORDER PROSECUTION UNIT

Sec. 41.351. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Border crime" means any crime that occurs in the border region and that undermines public safety or security, including an offense:

(A) during the prosecution of which an affirmative finding may be requested under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(B) under Chapter 19, 20, 20A, 46, or 71, Penal Code;

(C) under Title 7 or 8, Penal Code;

(D) under Chapter 481, Health and Safety Code;

(E) committed by a person who is not a citizen or national of the United States and is not lawfully present in the United States; or

(F) that is coordinated with or related to activities or crimes that occur or are committed in the United Mexican States.

(3) "Border prosecuting attorney" means an attorney in a border region who represents the state solely or primarily in the prosecution of border crime.

(4) "Border region" means the portion of this state that is located in a county that is adjacent to an international border and any

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 41, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. BORDER PROSECUTION UNIT

Sec. 41.351. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Border crime" and "border region" have the meanings assigned by Section 772.0071.

(3) "Border prosecuting attorney" means a prosecuting attorney in a border region who represents the state in the prosecution of felony border crimes.

county in which a prosecuting attorney listed in Section 41.353(a) serves.

(5) "Executive board" means the executive board governing the board of directors of the unit.

(6) "Prosecuting attorney" means a county attorney, district attorney, or criminal district attorney.

(7) "Unit" means the border prosecution unit.

Sec. 41.352. GENERAL FUNCTION OF BORDER PROSECUTION UNIT.

Sec. 41.353. BOARD OF DIRECTORS.

(a) The unit is governed by a board of directors composed of the following prosecuting attorneys:

(1) the district attorney for the 34th Judicial District;

(2) the district attorney for the 38th Judicial District;

(3) the district attorney for the 49th Judicial District;

(4) the district attorney for the 63rd Judicial District;

(5) the district attorney for the 79th Judicial District;

(6) the district attorney for the 81st Judicial District;

(7) the district attorney for the 83rd Judicial District;

(8) the district attorney for the 112th Judicial District;

(9) the district attorney for the 143rd Judicial District;

(10) the district attorney for the 156th Judicial District;

(11) the district attorney for the 229th Judicial District;

(12) the district attorney for the 293rd Judicial District;

(13) the district attorney for the 452nd Judicial District;

(14) the criminal district attorney for Hidalgo County;

(15) the district attorney for Cameron County;

(16) the district attorney for Kleberg and Kenedy Counties;

(17) the district attorney for Willacy County; and

(4) "Executive board" means the executive board governing the board of directors of the unit.

(5) "Prosecuting attorney" means a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction.

(6) "Unit" means the border prosecution unit.

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(10) the district attorney for the 156th Judicial District;

(11) the district attorney for the 229th Judicial District;

(12) the district attorney for the 293rd Judicial District;

(13) the district attorney for the 452nd Judicial District;

(14) the criminal district attorney for Hidalgo County;

(15) the county attorney with felony criminal jurisdiction for Cameron County;

(16) the district attorney for Kleberg and Kenedy Counties;

(17) the county attorney with felony criminal jurisdiction for Willacy County; and

(18) any other prosecuting attorney who represents the state in the prosecution of felonies for a judicial district that is created by the legislature in the border region.

(b) A prosecuting attorney described by Subsection (a) shall serve on the board of directors in addition to the other duties of the prosecuting attorney assigned by law.

(c) The board of directors shall meet annually for the purpose of electing the executive board and approving or amending bylaws governing the unit.

(d) A majority of the members of the board of directors constitutes a quorum for the transaction of business. The board of directors must approve any action by a majority vote of the members present.

(e) The board of directors shall divide the border region into three subregions and shall set the boundaries of the subregions as necessary.

(f) Each member of the board of directors shall enter into a memorandum of understanding with the unit to collaborate and cooperate in the prosecution of border crime.

Sec. 41.354. EXECUTIVE BOARD; DUTIES, AUTHORITY, AND GOVERNANCE.

Sec. 41.355. OFFICERS.

Sec. 41.356. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE BOARD NOT A CIVIL OFFICE OF EMOLUMENT.

Sec. 41.357. REIMBURSEMENT FOR EXPENSES.

Sec. 41.358. UNIT ADMINISTRATOR; REGIONAL COUNSEL; ADDITIONAL EMPLOYEES. (a) The executive board shall employ a person to serve as administrator of the unit and shall set the salary and benefits of the administrator.

(b) The executive board shall employ one or more attorneys as regional counsel for each subregion and shall set the salary and benefits of each regional counsel.

(c) The executive board may employ additional employees necessary for the discharge of the duties of the unit and shall determine the compensation of those

(18) any other prosecuting attorney who represents the state in the prosecution of felonies for a judicial district that is created by the legislature in the border region.

(b) A prosecuting attorney described by Subsection (a) shall serve on the board of directors in addition to the other duties of the prosecuting attorney assigned by law.

(c) The board of directors shall meet annually for the purpose of electing the executive board and approving or amending bylaws governing the unit.

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(b) The executive board shall employ one or more attorneys as regional counsel for each subregion and shall set the salary and benefits of each regional counsel.

(c) The executive board may employ additional employees necessary for the discharge of the duties of the unit and shall determine the compensation of those

employees.

Sec. 41.359. DUTIES OF UNIT. (a) The unit, in collaboration with the Department of Public Safety, shall assist and support the members of the board of directors in the prosecution of border crime, including by providing border prosecuting attorneys and investigative resources.

(b) The unit shall enter into a memorandum of understanding with each member of the board of directors to provide funding for the member to employ one or more border prosecuting attorneys.

A member of the board who employs a border prosecuting attorney shall set the salary and benefits of the attorney.

(c) The unit may enter into a memorandum of understanding under Subsection (b) with the prosecuting attorney for a judicial district that is not located in the border region if the Department of Public Safety determines that the judicial district is significantly affected by border crime.

(d) The unit shall facilitate the coordination and collaboration of the members of the board of directors with the regional counsel employed by the unit and with other law enforcement agencies, including the Department of Public Safety, in the investigation and prosecution of border crime.

(e) The unit shall develop a nonexclusive list of offenses not otherwise described by Section 41.351(2) that constitute border crime to provide guidance and enhance uniformity in the investigation and prosecution of border crime.

(f) The unit shall serve as a clearinghouse for information related to the investigation and prosecution of border crime and shall develop best practices and guidelines,

employees.

Sec. 41.359. DUTIES OF UNIT. (a) The unit, in collaboration with the Department of Public Safety, shall assist and support the members of the board of directors in the prosecution of border crime, including by providing border prosecuting attorneys, investigative and support staff, and other resources.

(b) The unit shall solicit requests for proposals from each member of the board of directors to provide funding for the member to employ one or more border prosecuting attorneys, to employ investigative and support staff, and to provide other resources. The unit shall review each request and make recommendations to the criminal justice division of the governor's office regarding the distribution of grant money under the prosecution of border crime grant program established under Section 772.0071.

A member of the board who employs a border prosecuting attorney or investigative or support staff shall set the salary and benefits of the attorney or staff member.

(c) The unit may solicit requests for proposals from, and make recommendations under Subsection (b) regarding the distribution of grant money to, a prosecuting attorney who serves a county or counties that are not located in the border region if the Department of Public Safety determines that the county or counties served by the attorney are significantly affected by border crime.

(d) The unit shall facilitate the coordination and collaboration of the members of the board of directors with the regional counsel employed by the unit and with other law enforcement agencies, including the Department of Public Safety, in the investigation and prosecution of border crime.

(e) The unit shall develop a nonexclusive list of offenses not otherwise described by Section 772.0071(a)(1) that constitute border crime to provide guidance and enhance uniformity in the investigation and prosecution of border crime.

(f) The unit shall serve as a clearinghouse for information related to the investigation and prosecution of border crime and shall develop best practices and guidelines,

including best practices for the collection and protection of confidential law enforcement information regarding each subregion.

(g) The unit shall assist in developing a training program and providing training to prosecuting attorneys and law enforcement agencies in the border region on specific issues and techniques relating to the investigation and prosecution of border crime.

Sec. 41.360. DUTIES OF REGIONAL COUNSEL. (a) An attorney employed as regional counsel for the unit shall assist the members of the board of directors, border prosecuting attorneys, and other regional counsel, as needed, in:

- (1) the prosecution of border crime;
- (2) the screening of cases involving border crime;
- (3) the presenting of cases involving border crime to a grand jury; and
- (4) the preparation and trial of cases involving border crime.

(b) The regional counsel shall serve as a liaison between the members of the board of directors and other criminal justice entities, including the Department of Public Safety and federal, state, and local prosecutors and law enforcement agencies located in the border region, by:

- (1) working closely with those entities, as needed, to coordinate and assist in the investigation and prosecution of border crime; and
- (2) attending multiagency task force hearings and meetings held by federal, state, and local prosecutors and law enforcement agencies on the investigation and prosecution of border crime.

(c) The regional counsel shall provide legal and technical assistance to law enforcement agencies investigating border crime, including by:

- (1) providing legal advice and recommendations regarding Fourth Amendment search and seizure issues, relevant statutes, and case law;
- (2) drafting and reviewing affidavits requesting the issuance of search warrants, wiretap orders, pen register and trap and trace orders, mobile tracking device orders, and similar court orders; and
- (3) drafting requests for court orders

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(g) The unit shall assist in developing a training program and providing training to prosecuting attorneys and law enforcement agencies in the border region on specific issues and techniques relating to the investigation and prosecution of border crime.

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(b) The regional counsel shall serve as a liaison between the members of the board of directors and other criminal justice entities, including the Department of Public Safety and federal, state, and local prosecutors and law enforcement agencies located in the border region, by:

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authorizing:

(A) the interception of oral, wire, and electronic communications;

(B) the installation and use of a pen register and trap and trace device;

(C) the disclosure of subscriber records and information; and

(D) other similar court orders that are required to be filed by a prosecutor.

(d) The regional counsel shall coordinate training with the unit for members of the board of directors and law enforcement agencies, including by:

(1) assisting in identifying training needs in the subregion in which the member's office or the agency is located;

(2) assisting in the development of training curricula and guidelines for the investigation and prosecution of border crime; and

(3) participating in and hosting training presentations and sessions in each subregion.

(e) The regional counsel shall provide legal and technical assistance to border prosecuting attorneys, including by:

(1) performing legal research relating to investigating and prosecuting border crime, if requested; and

(2) coordinating with border prosecuting attorneys and law enforcement agencies to identify experts in the investigation and prosecution of complex, long-term cases against organized criminal enterprises.

#### Sec. 41.361. GIFTS AND GRANTS.

Sec. 41.362. STATE PAYMENT OF CERTAIN COSTS. (a) The state shall reimburse a county located in the border region for:

(1) expenses incurred by the county for the investigation of border crime, whether or not the investigation results in the prosecution of an offense; and

(2) reasonable operational expenses of the unit, including training activities for the unit's employees and general expenses relating to its investigative and prosecutorial duties.

(b) The commissioners court of a county that has incurred expenses under Subsection (a) shall certify the amount of reimbursement for expenses to the comptroller. The comptroller shall issue a

authorizing:

(A) the interception of oral, wire, and electronic communications;

(B) the installation and use of a pen register or trap and trace device;

(C) the disclosure of subscriber or customer records and information; and

(D) other similar court orders that are required to be filed by a prosecutor.

(d) The regional counsel shall coordinate training with the unit for members of the board of directors and law enforcement agencies, including by:

(1) assisting in identifying training needs in the subregion in which the member's office or the agency is located;

(2) assisting in the development of training curricula and guidelines for the investigation and prosecution of border crime; and

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(1) performing legal research relating to investigating and prosecuting border crime, if requested; and

(2) coordinating with border prosecuting attorneys and law enforcement agencies to identify experts in the investigation and prosecution of complex, long-term cases against organized criminal enterprises.

#### Sec. 41.361. GIFTS AND GRANTS.

No equivalent provision.



warrant to the commissioners court in that amount or, if the comptroller determines that the amount certified by the commissioners court is unreasonable, in an amount that the comptroller determines to be reasonable.

No equivalent provision.

SECTION 2. Sections 772.0071(a)(1) and (2), Government Code, are amended to read as follows:

(1) "Border crime" means any crime that occurs in the border region and that undermines public safety or security, including an offense:

(A) during the prosecution of which an affirmative finding may be requested under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure;

(B) under Chapter 19, 20, 20A, 21, 22, 46, or 71, Penal Code;

(C) under Title 7 or 8, Penal Code;

(D) under Chapter 481, Health and Safety Code;

(E) committed by a person who is not a citizen or national of the United States and is not lawfully present in the United States; or

(F) that is coordinated with or related to activities or crimes that occur or are committed in the United Mexican States.

(2) "Border region" means the portion of this state that is located in a county that:

(A) is adjacent to[:

~~(A)]~~ an international border; ~~[or]~~

(B) is adjacent to a county described by Paragraph (A); or

(C) is served by a prosecuting attorney whose jurisdiction includes a county described by Paragraph (A) or (B).

No equivalent provision.

SECTION 3. Section 772.0071(d), Government Code, is repealed.

SECTION 2. This Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.