

## **BILL ANALYSIS**

Senate Research Center  
84R17783 KJE-F

H.B. 12  
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Veteran Affairs & Military Installations-S/C Border Security  
5/21/2015  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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 of the State of Texas (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. H.B. 12 seeks to help facilitate the unit's prosecution of border crimes and to continue that collaboration.

H.B. 12 amends current law relating to the border prosecution unit.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 41, Government Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. BORDER PROSECUTION UNIT**

Sec. 41.351. DEFINITIONS. Defines "board of directors," "border crime," "border region," "border prosecuting attorney," "executive board," "prosecuting attorney," and "unit" in this subchapter.

Sec. 41.352. GENERAL FUNCTION OF BORDER PROSECUTION UNIT. Provides that the border prosecution unit (unit) is an independent unit that cooperates with and supports border prosecuting attorneys in prosecuting border crime.

Sec. 41.353. BOARD OF DIRECTORS. (a) Provides that 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 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) Requires a prosecuting attorney described by Subsection (a) to serve on the board of directors of the unit in addition to the other duties of the prosecuting attorney assigned by law.

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

(d) Provides that a majority of the members of the board of directors constitutes a quorum for the transaction of business. Requires the board of directors to approve any action by a majority vote of the members present.

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

(f) Requires each member of the board of directors to 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.**

(a) Provides that the board of directors is governed by an executive board composed of seven members elected by the membership of the board of directors, as follows:

- (1) six members of the executive board are required to be elected to represent the subregions established under Section 41.353(e), with two members from each subregion elected by a majority vote of the members of the board of directors whose jurisdiction is located in that subregion; and
- (2) one member of the executive board is required to be elected by a majority vote of all members of the board of directors.

(b) Requires the board of directors to establish procedures for the election of the members of the executive board.

(c) Requires members of the executive board to serve terms of two years expiring January 1 of each odd-numbered year.

(d) Requires the executive board, if a vacancy on the executive board occurs before the end of the vacating member's term, to elect a person to serve the remainder of the term. Requires a person, to be eligible for election under this subsection, to meet any qualifications required of the vacating member for service on the executive board.

(e) Requires the executive board to conduct the business of the unit.

(f) Provides that a majority of the members of the executive board constitutes a quorum for the purpose of transacting business. Requires the executive board to approve any action by a majority vote of the members present.

Sec. 41.355. OFFICERS. (a) Requires the members of the board of directors, on a majority vote, to elect from among the membership of the executive board a presiding officer and an assistant presiding officer. Provides that the presiding officer serves as the presiding officer of the board of directors and the executive board, and the assistant presiding officer serves as the assistant presiding officer of the board of directors and the executive board.

(b) Provides that the presiding officer and the assistant presiding officer serve terms of one year.

(c) Provides that the assistant presiding officer serves as presiding officer of the board of directors and the executive board in the presiding officer's absence or if a vacancy occurs in that office until a new presiding officer is elected as provided by Subsection (d).

(d) Requires the executive board, if a vacancy occurs in the office of presiding officer or assistant presiding officer before the end of the vacating officer's term, to elect a person to serve the remainder of the term.

Sec. 41.356. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE BOARD NOT A CIVIL OFFICE OF EMOLUMENT. 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, including those purposes described in Section 40 (Holding More than One Office; Exceptions; Right to Vote), Article XVI, Texas Constitution.

Sec. 41.357. REIMBURSEMENT FOR EXPENSES. Provides that a member of the board of directors or executive board is not entitled to compensation for service on the board of directors or executive board, if applicable, but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a member of the board of directors or the executive board, if applicable, as provided by the General Appropriations Act.

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

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

(c) Authorizes the executive board to employ additional employees necessary for the discharge of the duties of the unit. Requires the executive board to determine the compensation of those employees.

Sec. 41.359. DUTIES OF UNIT. (a) Requires the unit, in collaboration with the Department of Public Safety of the State of Texas (DPS), to 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) Requires the unit to 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. Requires the unit to 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 (Prosecution of Border Crime Grant Program). Requires a member of the board who employs a border prosecuting attorney or investigative or support staff to set the salary and benefits of the attorney or staff member.

(c) Authorizes the unit to 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 DPS determines that the county or counties served by the attorney are significantly affected by border crime.

(d) Requires the 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.

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

(f) Requires the unit to serve as a clearinghouse for information related to the investigation and prosecution of border crime and to develop best practices and guidelines, including best practices for the collection and protection of confidential law enforcement information regarding each subregion.

(g) Requires the unit 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.

Sec. 41.360. DUTIES OF REGIONAL COUNSEL. (a) Requires an attorney employed as regional counsel for the unit to 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) Requires the regional counsel to serve as a liaison between the members of the board of directors and other criminal justice entities, including DPS 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) Requires the regional counsel to 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 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) Requires the regional counsel to 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) Requires the regional counsel to 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. Authorizes the unit to apply for and accept gifts, grants, and donations from any organization described in Section 501(c)(3) or (4) of the Internal Revenue Code of 1986 for the purposes of funding any activity of the unit under this subchapter. Authorizes the unit to apply for and accept grants under federal and state programs.

SECTION 2. Amends Sections 772.0071(a)(1) and (2), Government Code, as follows:

(1) Redefines "border crime" to mean any crime that occurs in the border region and that undermines public safety or security, including an offense under certain chapters, including Chapters 21 (General Provisions) and 22 (Appellate Courts).

(2) Redefines "border region" to mean the portion of this state that is located in a county that:

(A) is adjacent to an international border;

(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).

SECTION 3. Repealer: Section 772.0071(d) (authorizing undedicated and unobligated funds in the operators and chauffeurs license account to be appropriated only to the criminal justice division for the purpose of awarding grants under this section), Government Code.

SECTION 4. Effective date: September 1, 2015.