

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 3
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Veteran Affairs & Military Installations-S/C Border Security
3/17/2015
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. C.S.S.B. 3 will help the Department of Public Safety of the State of Texas (DPS) sustain and appropriately expand their successful efforts to tackle this problem.

C.S.S.B. 3 creates a consistent and permanent effort that all Texans can count on to reduce criminal activity and increase public safety.

Provisions of C.S.S.B. 3:

- Add aggravated promotion of prostitution and compelling prostitution as an enumerated offense in the state wiretap statute;
- Direct DPS to periodically review its existing information technology system and make any necessary improvements;
- Authorize 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;
- Create a DPS Reserve Officer Corps comprised of retired DPS officers who will assist with background investigations, sex offender compliance checks and other duties;
- Require DPS, in order to prevent the unlawful transfer of contraband from Texas and other unlawful activity, to investigate the feasibility of providing assistance to federal authorities at international border checkpoints;
- Ensure uniformity and transparency of crime data between law enforcement agencies at all levels of government through the adoption of the National Incident Based Reporting System (NIBRS); and
- Authorize the Texas Facilities Commission (TFC) to build a multiuse training facility to be used by the Texas Military Department, the Texas military forces, 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 requires that, on completion of the construction of the training facility, TFC will transfer ownership of the training facility to the Texas Military Department.

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.

C.S.S.B. 3 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 Alcoholic 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.

C.S.S.B. 3 also amends the Penal Code to change the conduct that constitutes a smuggling of persons offense. The bill creates the third degree felony offense of continuous smuggling of persons.

C.S.S.B. 3 amends current law relating to the powers and duties of the Department of Public Safety of the State of Texas, 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 public safety director in SECTION 7 (Section 411.0209, Government Code) of this bill.

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 7 (Section 411.0203, Government Code) and SECTION 8 (Section 411.054, Government Code) of this bill.

Rulemaking authority is expressly granted to the Texas Military Department in SECTION 9 (Section 437.164, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Sets forth legislative findings.

SECTION 2. Amends Article 2.12, Code of Criminal Procedure, as follows:

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

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

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

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

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

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

SECTION 3. 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:

- (1)-(5) Makes no change to these subdivisions;
- (6) Makes a nonsubstantive change;
- (7) an offense under Section 43.04 (If Defendant is Absent) or 43.05 (Capias Pro Fine Shall Recite), Penal Code; or
- (8) Creates this subdivision from existing text.

SECTION 4. 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 5. Amends Section 411.0043, Government Code, as follows:

Sec. 411.0043. New heading: **TECHNOLOGY POLICY; REVIEW.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Requires DPS to periodically:

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

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

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

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

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

Sec. 411.0163. **HIRING OFFICERS WITH PREVIOUS LAW ENFORCEMENT EXPERIENCE.** Authorizes DPS, notwithstanding any other provision of law and at the time a commissioned officer is hired, to 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 Sections 411.0203, 411.0208 and 411.0209, as follows:

Sec. 411.0203. **TEXAS TRANSNATIONAL INTELLIGENCE CENTER.** (a) Requires DPS to establish by rule the Texas Transnational Intelligence Center as a central repository of real-time information 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 locate the center in a county with a population of not more than 800,000 that is adjacent to the Texas-Mexico border. Provides that DPS may only locate the center in a county if the sheriff's department in the county and a police department of a municipality in the county agree to jointly operate the center.

(c) Requires the sheriff's department of the county in which the center is located and the police department of the municipality that agrees to jointly operate the center to assist in the establishment of the center.

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

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

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.

(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 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) Provides that DPS may share with the federal government the cost of staffing any international border checkpoints for the purposes of this section.

(c) Requires the director to adopt procedures as necessary to administer this section.

SECTION 8. Amends Subchapter D, Chapter 411, Government Code, by adding Section 411.054, as follows:

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

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

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

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

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

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

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

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

SECTION 9. Amends Subchapter D, Chapter 437, Government Code, by adding Section 437.164, as follows:

Sec. 437.164. **MULTIUSE TRAINING FACILITY.** (a) Requires the Texas Facilities Commission (TFC) to construct a multiuse training facility to be used by the Texas Military Department (department), the Texas military forces, DPS, 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 the department and DPS, to locate and acquire real property for the purpose of constructing the training facility.

(c) Requires the department and 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 the department.

(e) Requires the department to apply for federal money to reimburse the state for the cost of constructing the training facility.

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

SECTION 10. Reenacts Section 772.007, Government Code, as follows:

Sec. 772.007. **TEXAS ANTI-GANG GRANT PROGRAM.** (a) Requires the criminal justice division established under Section 772.006 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 the grant program administered under this section to 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) detailed reporting of the results and performance of the grant program administered under this section.

(e) Provides that the criminal justice division may use any revenue available for purposes of this section.

SECTION 11. 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:

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

(A) conceal the individual from a peace officer or special investigator; or

(B) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; or

Redesignates existing Subdivisions (1) and (2) as Paragraphs (A) and (B).

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

(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, rather than transported, 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 an offense under this section, except as provided by Subsection (c), is a state jail felony. Deletes existing Subsection (c)

providing that an offense under this is a felony of the third degree if the actor commits the offense for pecuniary benefit

(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) and Subsection (d).

SECTION 12. 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 30 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 30 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 12. 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 an offense under this section, except as provided in Subsections (c) and (d), 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) and (B) Makes no change to these paragraphs; or

(C) Makes a nonsubstantive change to this paragraph;

(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).

SECTION 14. 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 15. Requires DPS to adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

SECTION 16. Provides that the changes in law made by this Act to Sections 20.05 and 71.02 (Engaging in Organized Criminal Activity), Penal Code, apply only to an offense committed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 17. 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 18. Effective date: September 1, 2015.