

By: Williams

S.B. No. 9

A BILL TO BE ENTITLED

AN ACT

relating to homeland security.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.252 to read as follows:

Art. 2.252. VERIFICATION OF IMMIGRATION STATUS OF PERSON CHARGED WITH COMMITTING OFFENSE. (a) The peace officer arresting a person charged with committing an offense or the law enforcement agency that has custody of the person, as applicable, shall verify the immigration status of the person by use of the federal Secure Communities program operated by United States Immigration and Customs Enforcement or a successor program.

(b) A peace officer or law enforcement agency conducting an immigration status verification under Subsection (a) shall notify United States Immigration and Customs Enforcement if the officer or agency is unable to verify a person's immigration status.

SECTION 2. Section 14, Article 18.21, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) This section does not prohibit the installation and use of a mobile tracking device without an order in the course of a criminal investigation if an order is not required under the Texas Constitution or United States Constitution.

SECTION 3. Section 4(a), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

1           (a) In the penalty phase of the trial of a felony case in  
2 which the punishment is to be assessed by the jury rather than the  
3 court, if the offense of which the jury has found the defendant  
4 guilty is an offense under Section 71.02 or 71.023, Penal Code, or  
5 an offense listed in Section 3g(a)(1), Article 42.12, [~~of this~~  
6 ~~code~~] or if the judgment contains an affirmative finding under  
7 Section 3g(a)(2), Article 42.12, [~~of this code,~~] unless the  
8 defendant has been convicted of an offense under Section 21.02,  
9 Penal Code, an offense under Section 22.021, Penal Code, that is  
10 punishable under Subsection (f) of that section, or a capital  
11 felony, the court shall charge the jury in writing as follows:

12           "Under the law applicable in this case, the defendant, if  
13 sentenced to a term of imprisonment, may earn time off the period of  
14 incarceration imposed through the award of good conduct time.  
15 Prison authorities may award good conduct time to a prisoner who  
16 exhibits good behavior, diligence in carrying out prison work  
17 assignments, and attempts at rehabilitation. If a prisoner engages  
18 in misconduct, prison authorities may also take away all or part of  
19 any good conduct time earned by the prisoner.

20           "It is also possible that the length of time for which the  
21 defendant will be imprisoned might be reduced by the award of  
22 parole.

23           "Under the law applicable in this case, if the defendant is  
24 sentenced to a term of imprisonment, the defendant [~~he~~] will not  
25 become eligible for parole until the actual time served equals  
26 one-half of the sentence imposed or 30 years, whichever is less,  
27 without consideration of any good conduct time the defendant [~~he~~]

may earn. If the defendant is sentenced to a term of less than four years, the defendant ~~[he]~~ must serve at least two years before the defendant ~~[he]~~ is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if ~~[he is]~~ sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

SECTION 4. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN DRUG CONVICTIONS: LAW ENFORCEMENT FEE. (a) A person convicted of an offense punishable as a misdemeanor under Chapter 481, Health and Safety Code, shall pay \$100 on conviction of the offense.

(b) A person convicted of an offense punishable as a felony under Chapter 481, Health and Safety Code, shall pay \$200 on conviction of the offense.

(c) Costs imposed under this article are imposed without regard to whether the defendant is placed on community supervision after being convicted of the offense or receives deferred

1 disposition or deferred adjudication for the offense.

2 (d) The officer collecting the costs under this article  
3 shall keep separate records of the money collected and shall pay the  
4 money to the custodian of the municipal or county treasury.

5 (e) The custodian of the municipal or county treasury shall:

6 (1) keep records of the amount of money collected  
7 under this article that is deposited with the treasury under this  
8 article; and

9 (2) not later than the last day of the first month  
10 following each calendar quarter:

11 (A) pay the money collected under this article  
12 during the preceding calendar quarter to the comptroller; or

13 (B) if, in the calendar quarter, the custodian of  
14 the municipal or county treasury did not receive any money  
15 attributable to costs paid under this article, file a report with  
16 the comptroller stating that fact.

17 (f) The comptroller shall deposit the money collected under  
18 this article in the state treasury to the credit of the general  
19 revenue fund to be used for law enforcement purposes.

20 SECTION 5. Subchapter B, Chapter 102, Government Code, is  
21 amended by adding Section 102.0217 to read as follows:

22 Sec. 102.0217. ADDITIONAL COURT COSTS ON CONVICTION: CODE  
23 OF CRIMINAL PROCEDURE. A person convicted of an offense under  
24 Chapter 481, Health and Safety Code, shall pay the following under  
25 Article 102.0179, Code of Criminal Procedure, in addition to all  
26 other costs, to be used for law enforcement purposes:

27 (1) court cost on conviction of a misdemeanor offense

1   . . . \$100; and

2                   (2) court cost on conviction of a felony offense  
3   . . . \$200.

4           SECTION 6. Subchapter A, Chapter 411, Government Code, is  
5 amended by adding Section 411.0094 to read as follows:

6           Sec. 411.0094. AUTOMATIC LICENSE PLATE READER PILOT  
7 PROGRAM. (a) In this section, "automatic license plate reader"  
8 means a system that reads and records license plate numbers taken  
9 from digital photographs.

10           (b) The department shall establish a pilot program in which  
11 automatic license plate readers may be installed in law enforcement  
12 motor vehicles used by the department for law enforcement.

13           (c) The program must include a request for proposal process  
14 to select a contractor for the installation of automatic license  
15 plate readers.

16           (d) The department shall adopt rules as necessary to  
17 implement the program.

18           (e) Not later than December 1, 2012, the department shall  
19 file a report with the committee in each house of the legislature  
20 having primary jurisdiction over homeland security matters. The  
21 report must include:

22                   (1) information regarding the use of automatic license  
23 plate readers by the department; and

24                   (2) any other information that would assist the  
25 legislature in evaluating the effectiveness of the use of automatic  
26 license plate readers by the department.

27           (f) This section expires September 1, 2013.

SECTION 7. Section 411.023, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special ranger may not enforce a law ~~[except one designed to protect life and property and may not enforce a law]~~ regulating the use of a state highway by a motor vehicle. A special ranger is not connected with a ranger company or uniformed unit of the department.

(g) The commission may call special rangers into service to:

- (1) preserve the peace and protect life and property;
- (2) conduct background investigations;
- (3) monitor sex offenders;
- (4) serve as part of two-officer units on patrol in high threat areas; and
- (5) provide assistance to the department during disasters.

SECTION 8. Section 411.024, Government Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) A special Texas Ranger is subject to the orders of the commission and the governor for special duty to the same extent as other law enforcement officers provided for by this chapter, except that a special Texas Ranger may not enforce a law ~~[except one designed to protect life and property and may not enforce a law]~~

1 regulating the use of a state highway by a motor vehicle. A special  
2 Texas Ranger is not connected with a ranger company or uniformed  
3 unit of the department.

4 (g) The commission may call special Texas Rangers into  
5 service to:

- 6 (1) preserve the peace and protect life and property;  
7 (2) conduct background investigations;  
8 (3) monitor sex offenders;  
9 (4) serve as part of two-officer units on patrol in  
10 high threat areas; and  
11 (5) provide assistance to the department during  
12 disasters.

13 SECTION 9. Section 508.145(d), Government Code, is amended  
14 to read as follows:

15 (d) An inmate serving a sentence for an offense described by  
16 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K),  
17 Article 42.12, Code of Criminal Procedure, ~~[or for]~~ an offense for  
18 which the judgment contains an affirmative finding under Section  
19 3g(a)(2) of that article, or an offense under Section 71.02 or  
20 71.023, Penal Code, is not eligible for release on parole until the  
21 inmate's actual calendar time served, without consideration of good  
22 conduct time, equals one-half of the sentence or 30 calendar years,  
23 whichever is less, but in no event is the inmate eligible for  
24 release on parole in less than two calendar years.

25 SECTION 10. Section 508.149(a), Government Code, is amended  
26 to read as follows:

27 (a) An inmate may not be released to mandatory supervision

1 if the inmate is serving a sentence for or has been previously  
2 convicted of:

3 (1) an offense for which the judgment contains an  
4 affirmative finding under Section 3g(a)(2), Article 42.12, Code of  
5 Criminal Procedure;

6 (2) a first degree felony or a second degree felony  
7 under Section 19.02, Penal Code;

8 (3) a capital felony under Section 19.03, Penal Code;

9 (4) a first degree felony or a second degree felony  
10 under Section 20.04, Penal Code;

11 (5) an offense under Section 21.11, Penal Code;

12 (6) a felony under Section 22.011, Penal Code;

13 (7) a first degree felony or a second degree felony  
14 under Section 22.02, Penal Code;

15 (8) a first degree felony under Section 22.021, Penal  
16 Code;

17 (9) a first degree felony under Section 22.04, Penal  
18 Code;

19 (10) a first degree felony under Section 28.02, Penal  
20 Code;

21 (11) a second degree felony under Section 29.02, Penal  
22 Code;

23 (12) a first degree felony under Section 29.03, Penal  
24 Code;

25 (13) a first degree felony under Section 30.02, Penal  
26 Code;

27 (14) a felony for which the punishment is increased

under Section 481.134 or Section 481.140, Health and Safety Code;

(15) an offense under Section 43.25, Penal Code;

(16) an offense under Section 21.02, Penal Code; ~~[or]~~

(17) a first degree felony under Section 15.03, Penal Code; or

(18) a first degree felony under Section 71.02 or 71.023, Penal Code.

SECTION 11. Section 511.0101(a), Government Code, as amended by Chapters 977 (H.B. 3654) and 1215 (S.B. 1009), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(a) Each county shall submit to the commission on or before the fifth day of each month a report containing the following information:

(1) the number of prisoners confined in the county jail on the first day of the month, classified on the basis of the following categories:

(A) total prisoners;

(B) pretrial Class C misdemeanor offenders;

(C) pretrial Class A and B misdemeanor offenders;

(D) convicted misdemeanor offenders;

(E) felony offenders whose penalty has been reduced to a misdemeanor;

(F) pretrial felony offenders;

(G) convicted felony offenders;

(H) prisoners detained on bench warrants;

(I) prisoners detained for parole violations;

(J) prisoners detained for federal officers;

(K) prisoners awaiting transfer to the institutional division of the Texas Department of Criminal Justice following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and for whom paperwork and processing required for transfer have been completed;

(L) prisoners detained after having been transferred from another jail and for whom the commission has made a payment under Subchapter F, Chapter 499, Government Code;

(M) prisoners who:

(i) are not citizens or nationals of the United States; and

(ii) are unlawfully present in the United States according to the terms of the Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et seq.) ~~[known to be pregnant];~~ and

(N) other prisoners;

(2) the total capacity of the county jail on the first day of the month;

(3) the total number of prisoners who were confined in the county jail during the preceding month, based on a count conducted on each day of that month, who were known or had been determined to be pregnant; ~~[and]~~

(4) the total cost to the county during the preceding month of housing prisoners described by Subdivision (1)(M); and

(5) certification by the reporting official that the information in the report is accurate.

SECTION 12. Section 481.108, Health and Safety Code, is amended to read as follows:

Sec. 481.108. PREPARATORY OFFENSES. (a) Except as provided by Subsection (b), Title 4, Penal Code, applies to an offense under this chapter.

(b) The performance of an overt act described by Section 15.02(a)(2), Penal Code, that is otherwise required to establish criminal conspiracy under that section is not required for purposes of establishing criminal conspiracy with respect to an offense under this chapter.

SECTION 13. Section 71.02(b), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted and amended to read as follows:

(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 if the most serious offense is a felony of the first degree, the offense 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 15 years.

SECTION 14. Section 71.02(c), Penal Code, as amended by Chapters 761 (H.B. 354) and 900 (S.B. 1067), Acts of the 73rd Legislature, Regular Session, 1993, is reenacted to read as follows:

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subsection (a) that the person conspired to commit.

SECTION 15. Section 71.023, Penal Code, is amended to read as follows:

Sec. 71.023. DIRECTING ACTIVITIES OF ~~[CERTAIN]~~ CRIMINAL STREET GANGS. (a) A person commits an offense if the person knowingly ~~[initiates, organizes, plans,]~~ finances, directs, ~~[manages,]~~ or supervises ~~[a criminal street gang or]~~ members of a criminal street gang that commit or conspire to commit a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3) that is punishable as a felony of the first or second degree under Chapter 481, Health and Safety Code ~~[with the intent to benefit, promote, or further the interests of the criminal street gang or to increase the person's standing, position, or status in the criminal street gang].~~

(b) 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.

~~[(c) Notwithstanding Section 71.01, in this section, "criminal street gang" means:~~

1           ~~[(1) an organization that:~~

2                   ~~[(A) has more than 10 members whose names are~~  
3 ~~included in an intelligence database under Chapter 61, Code of~~  
4 ~~Criminal Procedure;~~

5                   ~~[(B) has a hierarchical structure that has been~~  
6 ~~documented in an intelligence database under Chapter 61, Code of~~  
7 ~~Criminal Procedure;~~

8                   ~~[(C) engages in profit-sharing among two or more~~  
9 ~~members of the organization; and~~

10                  ~~[(D) in one or more regions of this state served~~  
11 ~~by different regional councils of government, continuously or~~  
12 ~~regularly engages in conduct.~~

13                   ~~[(i) that constitutes an offense listed in~~  
14 ~~Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;~~

15                   ~~[(ii) in which it is alleged that a deadly~~  
16 ~~weapon is used or exhibited during the commission of or immediate~~  
17 ~~flight from the commission of any felony offense; or~~

18                   ~~[(iii) that is punishable as a felony of the~~  
19 ~~first or second degree under Chapter 481, Health and Safety Code; or~~

20                  ~~[(2) an organization that, in collaboration with an~~  
21 ~~organization described by Subdivision (1), engages in conduct or~~  
22 ~~commits an offense or conspires to engage in conduct or commit an~~  
23 ~~offense described by Subdivision (1)(D).]~~

24           SECTION 16. Section 521.059(b), Transportation Code, is  
25 amended to read as follows:

26           (b) The department shall authenticate the facial image and  
27 thumbprints or fingerprints provided by an applicant for a personal

1 identification certificate, driver's license, or commercial  
2 driver's license or permit using image comparison technology to  
3 ensure that the applicant:

4 (1) is issued only one original license, permit, or  
5 certificate;

6 (2) does not fraudulently obtain a duplicate license,  
7 permit, or certificate; ~~and~~

8 (3) does not commit other fraud in connection with the  
9 application for a license, permit, or certificate; and

10 (4) is not a fugitive from justice, as defined by  
11 Section 38.01, Penal Code.

12 SECTION 17. Chapter 600, Transportation Code, is amended by  
13 adding Section 600.005 to read as follows:

14 Sec. 600.005. DRIVER'S LICENSE AND EVIDENCE OF FINANCIAL  
15 RESPONSIBILITY CHECKPOINTS. (a) The department may establish a  
16 program for the purpose of establishing checkpoints to ensure that  
17 operators of motor vehicles in this state are not in violation of  
18 Section 521.021, 522.011, or 601.051.

19 (b) The department may establish the checkpoint program in  
20 conjunction with local law enforcement authorities. The department  
21 and local law enforcement authorities may share the cost of  
22 staffing the checkpoints conducted under the program established by  
23 this section.

24 (c) The department shall establish procedures to be used in  
25 the operation of a checkpoint conducted under the program  
26 established by this section.

27 (d) The procedures for the operation of a checkpoint

conducted under the program established by this section must:

(1) limit the discretion of the peace officers conducting the checkpoint;

(2) ensure that the selection of motor vehicles to be stopped is reasonably predictable and nonarbitrary;

(3) ensure that intrusion on the operator is minimized; and

(4) ensure that an inquiry is reasonably related to the purpose of the checkpoint.

(e) The department shall keep a record of the operation of a checkpoint conducted under the program established by this section that contains:

(1) the date, time, location, and duration of the checkpoint;

(2) the number of motor vehicles stopped at the checkpoint and the number and nature of arrests made and citations issued at the checkpoint; and

(3) the identities of the peace officers operating the checkpoint.

SECTION 18. Section 4(a), Article 37.07, Code of Criminal Procedure, Sections 508.145 and 508.149, Government Code, Section 481.108, Health and Safety Code, and Sections 71.02 and 71.023, Penal Code, as amended by this Act, and Article 102.0179, Code of Criminal Procedure, and Section 102.0217, Government Code, as added by this Act, 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 when the

1 offense was committed, and the former law is continued in effect for  
2 that purpose. For purposes of this section, an offense was  
3 committed before the effective date of this Act if any element of  
4 the offense occurred before that date.

5       SECTION 19. A county shall submit the first report required  
6 by Section 511.0101, Government Code, as amended by this Act, not  
7 later than October 5, 2011.

8       SECTION 20. This Act takes effect September 1, 2011.