

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 3  
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As Filed

### **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. 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.

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 S.B. 3:

- Authorize hiring certified police officers at the DPS Trooper II level and authorizes 10-hour work days for troopers serving in the border region, ending the current practice of periodically shifting officers from other parts of the state;
- Create a DPS Officer Reserve Corps of retired officers who may assist police statewide with background investigations, sex offender compliance checks, and other duties; and
- Impose tougher penalties for smugglers, and classifies human smuggling as organized crime.

The bill cuts cartels supply lines with new southbound checkpoints within 250 yards of the border to curb the flow of stolen vehicles, guns, and money being smuggled out of the United States.

S.B. 3 establishes a multiagency border-crime information center in the Rio Grande Valley led by local law enforcement with assistance from DPS.

S.B. 3 also requires law enforcement entities to adopt the National Incident Based Reporting System (NIBRS) to ensure the uniformity of crime data throughout the state.

As proposed, S.B. 3 amends current law relating to the powers and duties of the Department of Public Safety of the State of Texas and the investigation, prosecution, punishment, and prevention of certain offenses, creates an offense, and increases a criminal penalty.

### **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 8 (Section 411.054, Government Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. 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 2. 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 3. 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 4. Amends Section 411.0043, Government Code, as follows:

Sec. 411.0043. New heading: TECHNOLOGY POLICY; REVIEW. (a) Creates this subsection from existing text;

(b) Requires the 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 5. Amends Section 411.007(g), Government Code, as follows:

(g) Provides that, except as provided by Section 411.0164, a noncommissioned employee inducted into the service of DPS 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 DPS until the anniversary of the date the officer is commissioned. Makes no further change to this subsection.

SECTION 6. Amends Subchapter A, Chapter 411, Government Code, by adding Sections 411.0163 and 411.0164, as follows:

Sec. 411.0163. 50-HOUR WORK WEEK. Provides that, notwithstanding any other law, for a commissioned officer of DPS assigned to a DPS 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. Authorizes DPS, notwithstanding any other provision of law, to 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.

SECTION 7. Amends Subchapter A, Chapter 411, Government Code, by adding Sections 411.0208 and 411.0209, as follows:

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. INTERNATIONAL BORDER CHECKPOINTS. (a) Requires DPS to 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 to prevent human trafficking and the unlawful transfer of firearms and bulk currency from this state to the United Mexican States. Requires DPS to cooperate with appropriate federal agencies to set up the checkpoints if DPS determines that assistance to be feasible.

(b) Requires that a checkpoint described by Subsection (a) 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) Prohibits a peace officer employed by DPS from conducting 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 (Money Laundering) or 46.14 (Firearm Smuggling), Penal Code, or 18 U.S.C. Section 554, 922, 1589, 1590, 1591, 1592, or 1956 or 31 U.S.C. Section 5332.

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

(e) Requires DPS to 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 related to the purpose of the checkpoint.

(f) Requires the attorney general, subject to approval by the governor, to 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 if necessary to implement this section,

(g) Requires that an agreement entered into under Subsection (f) 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) Authorizes a law enforcement agency to 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) Requires the director to adopt rules 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.

SECTION 9. Amends Chapter 362, Local Government Code, by adding Section 362.005, as follows:

Sec. 362.005. SOUTH TEXAS BORDER CRIME INFORMATION CENTER. (a) Requires 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 to jointly establish and operate the South Texas Border Crime Information Center (center) as a central repository of information relating to criminal activity in the counties along the Texas-Mexico border. Requires DPS to assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(b) Requires each law enforcement agency in a county located along the Texas-Mexico border 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.

(c) Requires the information in the center to be made available to each law enforcement agency in the state.

SECTION 10. 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 recklessly:

(1) conceals, harbors, or shields from detection a person who is present in this country in violation of federal law; or

(2) encourages or induces a person to enter or remain in this country in violation of federal law.

Deletes existing text providing that a person commits an offense if the person 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 flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor.

(b) Provides that an offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if the actor commits the offense for pecuniary benefit;

(2) a felony of the second degree 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; or

(3) a felony of the first degree 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, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021, or the smuggled individual suffered serious bodily injury or death.

(c) Redesignates existing Subsection (e) as Subsection (c). Deletes existing Subsection (d) providing that 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.

SECTION 11. 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 third 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 Section 71.02(a), 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.

SECTION 13. 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 14. (a) Requires DPS to adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

(b) Provides that 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) Prohibits DPS or the criminal justice division of the governor's office from denying 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. 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 16. 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 17. Effective date: September 1, 2015.