By: Birdwell S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Department of Public Safety and the investigation, prosecution, punishment, and prevention of certain offenses; creating an offense and increasing a criminal penalty.

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

SECTION 1. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers, [and] officers, and members of the reserve officer corps commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal
district attorneys’, and county attorneys’ offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million located primarily in a county with a population of 2 million or more that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;
investigators commissioned by the Texas Medical Board;

officers commissioned by:

(A) the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, or the El Paso County Hospital District under Section 281.057, Health and Safety Code;

(B) the board of directors of the Ector County Hospital District under Section 1024.117, Special District Local Laws Code; and

(C) the board of directors of the Midland County Hospital District of Midland County, Texas, under Section 1061.121, Special District Local Laws Code;

county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

investigators employed by the Texas Racing Commission;

officers commissioned under Chapter 554, Occupations Code;

officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

investigators commissioned by the attorney general under Section 402.009, Government Code;

security officers and investigators commissioned as peace officers under Chapter 466, Government Code;
an officer employed by the Department of State Health Services under Section 431.2471, Health and Safety Code;

officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

officers commissioned by the state fire marshal under Chapter 417, Government Code;

an investigator commissioned by the commissioner of insurance under Section 701.104, Insurance Code;

apprehension specialists and inspectors general commissioned by the Texas Juvenile Justice Department as officers under Sections 242.102 and 243.052, Human Resources Code;

officers appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;

investigators commissioned by the Texas Commission on Law Enforcement under Section 1701.160, Occupations Code;

commission investigators commissioned by the Texas Private Security Board under Section 1702.061, Occupations Code;

the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code;

officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section;

investigators commissioned by the Texas Juvenile
Justice Department as officers under Section 221.011, Human Resources Code; and

(36) the fire marshal and any related officers, inspectors, or investigators commissioned by a county under Subchapter B, Chapter 352, Local Government Code.

SECTION 2. Section 4, Article 18.20, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED. A judge of competent jurisdiction may 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) a felony under Section 19.02, 19.03, or 43.26, Penal Code;

(2) a felony under:

   (A) Chapter 481, Health and Safety Code, other than felony possession of marihuana;

   (B) Section 485.032, Health and Safety Code; or

   (C) Chapter 483, Health and Safety Code;

(3) an offense under Section 20.03 or 20.04, Penal Code;

   (4) an offense under Chapter 20A, Penal Code;

   (5) an offense under Chapter 34, Penal Code, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements

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that are substantially similar to the elements of an offense under
Title 5;

(6) an offense under Section 38.11, Penal Code; [or]

(7) an offense under Section 43.04 or 43.05, Penal Code; or

(8) an attempt, conspiracy, or solicitation to commit
an offense listed in this section.

SECTION 3. 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, is reenacted and amended
to read as follows:

(2) "Contraband" means property of any nature,
including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under
the Penal Code; 

(ii) any felony under Section 15.031(b),
20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33,
33A, or 35, Penal Code;

(iii) any felony under The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal
Code, that is punishable as a felony of the third degree or state
jail felony, if the defendant has been previously convicted three
times of an offense under that chapter;

(B) used or intended to be used in the commission
(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
(ii) any felony under Chapter 483, Health and Safety Code;
(iii) a felony under Chapter 151, Finance Code;
(iv) any felony under Chapter 34, Penal Code;
(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
(vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;
(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;
(ix) any offense under Section 42.10, Penal Code;
(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;
(xi) any offense under Chapter 71, Penal Code;
(xii) any offense under Section 20.05 or 20.06, Penal Code; or
(xiii) any offense under Section...
326.002, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

SECTION 4. Section 411.0043, Government Code, is amended to read as follows:

Sec. 411.0043. TECHNOLOGY POLICY; REVIEW. (a) The commission shall implement a policy requiring the department to use appropriate technological solutions to improve the department’s ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

(b) The department shall periodically:

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

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

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

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

SECTION 5. Section 411.007(g), Government Code, is amended to read as follows:

(g) Except as provided by Section 411.0164, a noncommissioned employee inducted into the service of the department 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 the department until the anniversary of the date the officer is commissioned. At any time during the probationary period, an officer or employee may be discharged if the director, with the advice and consent of the commission, finds the officer or employee to be unsuitable for the work.

SECTION 6. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0163 and 411.0164 to read as follows:

Sec. 411.0163. 50-HOUR WORK WEEK. Notwithstanding any other law, for a commissioned officer of the department assigned to a department 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. Notwithstanding any other provision of law, the department may 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. Subchapter A, Chapter 411, Government Code, is amended by adding Sections 411.0208 and 411.0209 to read as follows:

Sec. 411.0208. RESERVE OFFICER CORPS. (a) The commission may provide for the establishment of a reserve officer corps consisting of retired or previously commissioned officers of the department.

(b) The commission shall establish qualifications and standards of training for members of the reserve officer corps.

(c) The commission may limit the size of the reserve officer corps.

(d) The director shall appoint the members of the reserve officer corps. Members serve at the director's discretion.

(e) The director may call the reserve officer corps into service at any time the director considers it necessary to have additional officers to assist the department in conducting background investigations, sex offender compliance checks, and other duties as determined necessary by the director.

Sec. 411.0209. INTERNATIONAL BORDER CHECKPOINTS. (a) To prevent human trafficking and the unlawful transfer of firearms and bulk currency from this state to the United Mexican States, the department shall 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. If the department determines that assistance to be feasible, the
department shall cooperate with appropriate federal agencies to set
up the checkpoints.

(b) A checkpoint described by Subsection (a) must 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) A peace officer employed by the department may not
conduct 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
or 46.14, Penal Code, or 18 U.S.C. Section 554, 922, 1589, 1590,
1591, 1592, or 1956 or 31 U.S.C. Section 5332.

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

(e) The department shall 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) If necessary to implement this section, the attorney
general, subject to approval by the governor, shall 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.

(g) An agreement entered into under Subsection (f) must 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) A law enforcement agency may 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) The director shall adopt rules as necessary to administer this section.

SECTION 8. Subchapter D, Chapter 411, Government Code, is amended by adding Section 411.054 to read as follows:

Sec. 411.054. CRIME STATISTICS REPORTING. (a) Each local law enforcement agency shall:

(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 the department information and statistics concerning criminal offenses committed in the jurisdiction of the local law enforcement agency.

(b) The department shall adopt rules to implement this section, including rules prescribing:

(1) the form and manner of the submission of information and statistics; and
(2) the frequency of reporting.

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

SECTION 9. Chapter 362, Local Government Code, is amended by adding Section 362.005 to read as follows:

Sec. 362.005. SOUTH TEXAS BORDER CRIME INFORMATION CENTER.

(a) 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 shall jointly establish and operate the South Texas Border Crime Information Center as a central repository of information relating to criminal activity in the counties along the Texas-Mexico border. The Texas Department of Public Safety shall assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(b) Each law enforcement agency in a county located along the Texas-Mexico border shall report to the South Texas Border Crime Information 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) The information in the South Texas Border Crime Information Center shall be made available to each law enforcement agency in the state.
SECTION 10. Section 20.05, Penal Code, is amended to read as
follows:

Sec. 20.05. SMUGGLING OF PERSONS. (a) A person commits an
offense if the person recklessly [intentionally uses a motor
vehicle, aircraft, or watercraft to transport an individual with
the intent to]:

(1) conceals, harbors, or shields from detection a
person who is present in this country in violation of federal law
[conceal the individual from a peace officer or special
investigator]; or

(2) encourages or induces a person to enter or remain
in this country in violation of federal law [flee from a person the
actor knows is a peace officer or special investigator attempting
to lawfully arrest or detain the actor].

(b) An [Except as provided by Subsection (c), an] offense
under this section is a state jail felony, except that the[.]

[(c) An] offense [under this section] is:

(1) a felony of the third degree if the actor commits
the offense [.

[(1)] for pecuniary benefit; [or]

(2) a felony of the second degree if:

(A) the actor commits the offense in a manner
that creates a substantial likelihood that the smuggled
[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
(3) 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, or aggravated sexual assault, as defined by Section 22.021; or
   (B) the smuggled individual suffered serious bodily injury or death.

(c) [(d)] 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.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

SECTION 11. Chapter 20, Penal Code, is amended by adding Section 20.06 to read as follows:

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) 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.

(b) 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. The jury must 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) If the victim of an offense under Subsection (a) is the
same victim as a victim of an offense under Section 20.05, a
defendant may not be convicted of the offense under Section 20.05 in
the same criminal action as the offense under Subsection (a),
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) A defendant may not be 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) Except as provided by Subsections (f) and (g), an
offense under this section is a felony of the third degree.

(f) 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) 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, 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. Section 71.02(a), Penal Code, is amended to
read as follows:

(a) 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 the
following:

(1) murder, capital murder, arson, aggravated
robbery, robbery, burglary, theft, aggravated kidnapping,
kidnapping, aggravated assault, aggravated sexual assault, sexual
assault, continuous sexual abuse of young child or children,
solicitation of a minor, forgery, deadly conduct, assault
punishable as a Class A misdemeanor, burglary of a motor vehicle, or
unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A
misdemeanor;

(3) promotion of prostitution, aggravated promotion
of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or 20.06; or
(18) any offense classified as a felony under the Tax Code.

SECTION 13. 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. An application for an interception order filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 14. (a) The Department of Public Safety shall adopt rules required under Section 411.054(b), Government Code, as added by this Act, not later than December 31, 2015.

(b) 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) The Department of Public Safety or the criminal justice division of the governor's office may not deny 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. The changes in law made by this Act to Sections 20.05 and 71.02, Penal Code, 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 on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element
of the offense occurred before that date.

SECTION 16. 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. This Act takes effect September 1, 2015.