

## **BILL ANALYSIS**

Senate Research Center

S.B. 1849  
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Criminal Justice  
4/28/2017  
As Filed

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

The events leading up to Sandra Bland's unnecessary jailing and tragic death sparked a statewide and national discussion regarding criminal justice reform. S.B. 1849 aims to improve and correct Texas' criminal justice system to make it better for both law enforcement and the public and prevent future tragedies like Sandra Bland's.

S.B. 1849 addresses a variety of criminal justice topics including bail reform, jail diversion, jail safety, officer training, racial profiling, data collection, officer discipline, and behavioral health.

Currently, too many people are being brought to jail and remain there unnecessarily. Improving Texas' bail system by increasing the proper use of personal recognizance bonds, preventing arrests for fine-only offenses, and diverting people with behavioral health issues to treatment under S.B. 1849 will help alleviate the strain on our jails.

S.B. 1849 also works to make our jails safer by improving training for jailers, requires jails to have access to health and mental health professionals, either in person or through tele-health, automated electronic sensors to ensure accurate cell checks, and an independent ombudsman office to oversee county jails. S.B. 1849 also creates a grant program to ensure that all county jails will be able to afford these necessary changes.

To make both officers and the public safer, S.B. 1849 increases officer training in general de-escalation and mental health de-escalation tactics. The use of de-escalation tactics helps ensure that both law enforcement and the public are able to go home safe.

Currently there appears to be racial disparities in how the Texas Department of Public Safety (DPS) searches blacks when compared to whites after they have been pulled over for a traffic violation. Additionally, data collection and presentation could be improved. S.B. 1849 address these concerns by strengthening Texas' racial profiling law, as well as ensuring that the data Texas collects is robust, clear, and accurate. S.B. 1849 also creates a more uniform and transparent system to ensure officer discipline is more transparent.

As proposed, S.B. 1849 amends current law relating to interactions between law enforcement and individuals detained or arrested on suspicion of the commission of criminal offenses and the confinement or release of those individuals prior to prosecution.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission on Jail Standards in SECTION 3.06 (Section 511.009), Government Code), and SECTION 3.07 (Section 511.019, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Public Safety (DPS) is modified in SECTION 5.06 (Article 2.137, Code of Criminal Procedure) of this bill.

Rulemaking authority is expressly granted to Texas Commission on Law Enforcement SECTION 5.12 (Section 543.0045, Transportation Code) of this bill.

Rulemaking authority previously granted to the office of independent ombudsman and the Texas Juvenile Justice Board is modified in SECTION 7.05 (Section 261.058, Human Resources Code) of this bill.

Rulemaking authority previously granted to DPS is rescinded in SECTION 5.13 (Article 2.135, Code of Criminal Procedure) of this bill.

## **SECTION BY SECTION ANALYSIS**

### ARTICLE 1. SHORT TITLE, PREAMBLE, AND FINDINGS

SECTION 1.01. SHORT TITLE. Requires that this Act be known as the Sandra Bland Act in memory of Sandra Bland.

SECTION 1.02. PREAMBLE. Sets forth the preamble to this Act.

SECTION 1.03. FINDINGS. Sets forth the findings of the House Committee on County Affairs.

### ARTICLE 2. IDENTIFICATION AND DIVERSION OF PERSONS SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY

SECTION 2.01. Amends Article 16.22, Code of Criminal Procedure, as follows:

Art. 16.22. New heading: EARLY IDENTIFICATION OF DEFENDANT SUSPECTED OF HAVING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) through (c) Changes references to mental retardation to intellectual disability or intellectual and developmental disability, and changes references to the Department of Aging and Disability Services (DADS) to the Health and Human Services Commission (HHSC).

(d) Provides that this article does not prevent the applicable court from, at certain times, releasing a defendant who has a mental illness or is a person with an intellectual disability, rather than releasing a mentally ill or mentally retarded defendant, from custody on personal or surety bond.

SECTION 2.02. Amends Chapter 16, Code of Criminal Procedure, by adding Article 16.23, as follows:

Art. 16.23. DIVERSION OF PERSONS SUFFERING MENTAL HEALTH CRISIS OR SUBSTANCE ABUSE. Requires each peace officer to make a good faith effort to divert a person suffering a mental health crisis or substance abuse to a proper treatment center in the officer's jurisdiction if it is reasonably possible to divert the person, the offense that the person is accused of is a misdemeanor, other than a misdemeanor involving violence, and the crisis or abuse is suspected to be the reason the person committed the alleged offense.

SECTION 2.03. Amends Article 539.002, Government Code, as follows:

Sec. 539.002. GRANTS FOR ESTABLISHMENT AND EXPANSION OF COMMUNITY COLLABORATIVES. (a) Requires the Department of State Health Services (DSHS), to the extent funds are appropriated to DSHS for that purpose, to make grants to certain entities to establish or expand community collaboratives that bring the public and private sectors together to provide services to certain persons. Requires DSHS, in awarding grants, to give special consideration to certain entities. Deletes existing text authorizing DSHS to make a maximum of five grants, which are required to be made in the most populous municipalities in this state that are located in counties with a population of more than one million.

(b) Requires DSHS to require each entity awarded a grant under this section to leverage additional funding from private sources in an amount that is at least equal to the amount of the grant awarded under this section; provide evidence of

significant coordination and collaboration between the entity, local mental health authorities, municipalities, local law enforcement agencies, and other community stakeholders in establishing or expanding a community collaborative funded by a grant awarded under this section; and provide evidence of a local law enforcement policy to divert appropriate persons from jails or other detention facilities to an entity affiliated with a community collaborative for services.

SECTION 2.04. Amends Chapter 539, Government Code, by adding Article 539.0051, as follows:

Sec. 539.0051. PLAN REQUIRED FOR CERTAIN COMMUNITY COLLABORATIVES. (a) Requires the governing body of a county to develop and make public a plan detailing certain information.

(b) Provides that the governing body of a county in which an entity that received a grant under Section 539.002 before September 1, 2017, is located is not required to develop a plan under Subsection (a).

(c) Authorizes counties with a population under 50,000 to work with multiple other counties that touch them that also have a population under 50,000 to form a joint plan.

SECTION 2.05. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0264, as follows:

Sec. 32.0264. SUSPENSION, TERMINATION, AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR INDIVIDUALS CONFINED IN COUNTY JAILS. (a) Defines "county jail."

(b) Requires HHSC, if an individual is confined in a county jail because the individual has been charged with but not convicted of an offense, to suspend the individual's eligibility for medical assistance during the period the individual is confined in the county jail.

(c) Requires HHSC, if an individual is confined in a county jail because the individual has been convicted of an offense, to, as appropriate terminate the individual's eligibility for medical assistance or suspend the individual's eligibility during the period the individual is confined in the county jail.

(d) Requires HHSC, not later than 48 hours after HHSC is notified of the release from a county jail of an individual whose eligibility for medical assistance has been suspended under this section, to reinstate the individual's eligibility, provided the individual's eligibility certification period has not elapsed. Provides that following the reinstatement, the individual remains eligible until the expiration of the period for which the individual was certified as eligible.

SECTION 2.06. Amends Subchapter C, Chapter 351, Local Government Code, by adding Section 351.046, as follows:

Sec. 351.046. NOTICE TO CERTAIN GOVERNMENTAL ENTITIES. (a) Authorizes the sheriff of a county to notify HHSC on the confinement in the county jail of an individual who is receiving medical assistance benefits under Chapter 32 (Medical Assistance Program), Human Resources Code, and on the conviction of a prisoner who, immediately before the prisoner's confinement in the county jail, was receiving medical assistance benefits.

(b) Requires the sheriff, if the sheriff of a county chooses to provide the notices described by Subsection (a), to provide the notices electronically or by other appropriate means as soon as possible and not later than the 30th day after the date of the individual's confinement or prisoner's conviction, as applicable.

(c) Authorizes the sheriff of a county to notify the United States Social Security Administration of the release or discharge of a prisoner who, immediately before the prisoner's confinement in the county jail, was receiving Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq. or Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq. and notify HHSC of the release or discharge of a prisoner who, immediately before the prisoner's confinement in the county jail, was receiving medical assistance benefits.

(d) Requires the sheriff, if the sheriff of a county chooses to provide the notices described by Subsection (c), to provide the notices electronically or by other appropriate means not later than 48 hours after the prisoner's release or discharge from custody.

(e) Requires the sheriff, if the sheriff of a county chooses to provide the notices described by Subsection (c), at the time of the prisoner's release or discharge, to provide the prisoner with a written copy of each applicable notice and a phone number at which the prisoner is authorized to contact HHSC regarding confirmation of or assistance relating to reinstatement of the individual's eligibility for medical assistance benefits, if applicable.

(f) Requires HHSC to establish a means by which the sheriff of a county, or an employee of the county or sheriff, may determine whether an individual confined in the county jail is or was, as appropriate, receiving medical assistance benefits under Chapter 32, Human Resources Code, for purposes of this section.

(g) Provides that the county or sheriff, or an employee of the county or sheriff, is not liable in a civil action for damages resulting from a failure to comply with this section.

SECTION 2.07. Provides that Sections 32.0264(a)-(c), Human Resources Code, and Section 351.046(a), Local Government Code, as added by this Act, apply to an individual whose period of confinement in a county jail begins on or after the effective date of this Act, regardless of the date the individual was determined eligible for medical assistance under Chapter 32, Human Resources Code.

SECTION 2.08. Provides that Section 32.0264(d), Human Resources Code, and Section 351.046(c), Local Government Code, as added by this Act, apply to the release or discharge of a prisoner from a county jail that occurs on or after the effective date of this Act, regardless of the date the prisoner was initially confined in the county jail.

SECTION 2.09. Requires the state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

### ARTICLE 3. BAIL AND PRETRIAL RELEASE

SECTION 3.01. Amends Article 17.03, Code of Criminal Procedure, by amending Subsections (a) and (c) and adding Subsection (b-1), as follows:

(a) Provides an exception under Subsection (b-1) and makes nonsubstantive changes.

(b-1) Requires a magistrate, notwithstanding any other law, to release on personal bond a defendant who is not charged with and has not been previously convicted of a violent offense unless the magistrate finds good cause to justify not releasing the defendant on personal bond.

(c) Authorizes, rather than requires, the court or a magistrate to require as a condition of personal bond that the defendant submit to certain testing regarding substances in the

defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

SECTION 3.02. Amends the heading to Article 17.032, Code of Criminal Procedure, to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN DEFENDANTS WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

SECTION 3.03. Amends Articles 17.032(b) and (c), Code of Criminal Procedure, to change references to mental retardation to intellectual disability or intellectual and developmental disability, change a reference to the Texas Department of Mental Health and Mental Retardation (TXMHMR) to DSHS, and make conforming changes.

SECTION 3.04. Amends Article 17.033, Code of Criminal Procedure, as follows:

Art. 17.033. RELEASE ON BOND OF CERTAIN PERSONS ARRESTED WITHOUT A WARRANT. (a) Changes a reference to a bond to a personal bond. Deletes existing text setting a maximum bond amount of \$5,000, requiring a person, if the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, to be released on personal bond.

(b) Decreases the maximum bond amount for a person who is arrested without a warrant and who is detained in jail from \$10,000 to \$5,000, and requires the person to be released not later than the 24th, rather than 48th, hours after the person's arrest.

(c) Authorizes a magistrate, on filing of an application by the attorney representing the state, to postpone the release of a person not more than 48, rather than 72, hours after the person's arrest. Deletes reference to Subsection (a-1).

(d) Makes conforming changes.

SECTION 3.05. Amends Articles 25.03 and 25.04, Code of Criminal Procedure, as follows:

Art. 25.03. IF ON BAIL IN FELONY. Requires the clerk, at the earliest possible time, when the accused in a case of a felony is on bail at the time the indictment is presented, to deliver a copy of the same to the accused or his counsel. Deletes existing text stating that it is not necessary to serve him with a copy of the indictment, or requiring delivery of a copy on request to the accused or his counsel.

Art. 25.04. IN MISDEMEANOR. Requires that in misdemeanors it be, rather than not be, necessary before trial for the clerk to furnish the accused with a copy of the indictment or information and to deliver a copy of the same to the accused or his counsel, at the earliest possible time. Deletes existing text authorizing the defendant or his counsel to demand a copy, which shall be given as early as possible.

SECTION 3.06. Amends Chapter 511, Government Code, by adding Section 511.009(a)(21-23), as follows:

(21) Requires the Commission on Jail Standards (TCJS) to adopt reasonable rules establishing minimum standards for jails regarding use of force, prevention of sexual assault, the management of intoxicated inmates, and the continuity of medication for inmates upon entry and release from the jail.

(22) Requires TCJS to adopt reasonable standards for jails in establishing guidelines for inmate safety that include requiring jails to have 24 hour access to a mental health professional either on site or through a telemental health service, automated electronic

sensors to ensure accurate and timely cell checks, and on-duty nurse or EMT for all shifts.

(23) Requires TCJS to adopt a chief command position exam that the person assigned to the chief command position overseeing a county jail is required to pass. Authorizes the chief command position exam to be taken at any testing center, and the testing center is authorized to charge a reasonable fee up to \$50 for administering and grading the exam.

(24) Requires TCJS to adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of inmates and prisoners in county jails. Requires the rules and procedures to require that inmates and prisoners who are determined to be lawfully taking a prescription medication when they enter the county jail be maintained on that same prescription medication until a qualified health care professional directs otherwise upon individualized consideration.

SECTION 3.07. Amends Chapter 511, Government Code, by adding Section 511.019, as follows:

Sec. 511.019. COUNTY INMATE SAFETY FUND. (a) Provides that the County Inmate Safety Fund (CISF) is a dedicated account in the general revenue fund.

(b) Provides that CISF consists of appropriations of money to CISF by the legislature and gifts, grants, including grants from the federal government, and other donations received for CISF.

(c) Requires TCJS to only make grants to county jails with a certified capacity of 96 inmates or below.

(d) Authorizes money in CISF to be appropriated only to TCJS to pay for capital improvements that are required under section 511.009(a)(22).

(e) Requires TCJS, by rule, to establish a grant program to provide grants to counties to fund programs, training, or capital improvements described by Subsection (c).

SECTION 3.08. Amends Chapter 511, Government Code, by adding Section 511.020, as follows:

Sec. 511.020. COLLECTION OF SERIOUS INCIDENTS. (a) Requires the sheriff of each county jail to report on a monthly basis to TCJS the occurrence in their jail of certain events.

(b) Requires TCJS to make this data available to the public, and requires TCJS to produce a monthly report of the data.

SECTION 3.09. Amends Chapter 511, Government Code, by adding Section 511.1, as follows:

Sec. 511.1. OUTSIDE INVESTIGATION OF JAIL DEATHS. (a) Requires the Texas Department of Public Safety (DPS) to appoint a law enforcement agency other than that who operates the county jail where an inmate's death happened to investigate that inmate's death as soon as applicable.

(b) Requires the law enforcement agency that operates the county jail where the inmate's death occurred to begin and conduct the investigation until the other law enforcement agency is named and begins their investigation.

(c) Requires the law enforcement agency that operates the county jail where the inmate's death occurred to hand over all evidence and be in complete compliance with the law enforcement agency assigned to the investigation.

SECTION 3.10. Makes application of Articles 17.03 and 17.032, Code of Criminal Procedure, as amended by this Article, prospective.

SECTION 3.11. Makes application of Article 17.033, 25.03, and 25.04, Code of Criminal Procedure, as amended by this Article, prospective.

SECTION 3.12. Provides that, to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.13. Provides that the change in law made by this article to Article 511, Government Code, applies only to events on or after the effective date of this Act.

SECTION 3.14. Requires TCJS, related to the change in law made by this article to Article 511.009(a)(22), Government Code, to adopt rules by September 1, 2018, and requires county jails to be in compliance by September 1, 2020.

SECTION 3.15. Requires the chief command position exam described in Article 511.009(a)(23), Government Code, to be developed by the Criminal Justice Department at Sam Houston University with input and approval from TCJS.

#### ARTICLE 4. PEACE OFFICER TRAINING

SECTION 4.01. Amends Section 1701.253, Occupations Code, by amending Subsections (c), (h), and (j) and adding Subsection (n), as follows:

(c) Requires the Texas Commission on Law Enforcement (TCOLE), as part of the minimum curriculum requirements, to establish statewide comprehensive education and training program on civil rights, racial sensitivity, implicit bias, and cultural diversity for persons licensed under this chapter (Law Enforcement Officer).

(h) Requires an officer to complete a program established under this subsection not later than the first, rather than second, anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(j) Provides that TCOLE's required statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments is a 40-hour program. Makes conforming and nonsubstantive changes.

(n) Requires TCOLE, as part of the minimum curriculum requirements, to require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force. Requires an officer to complete the program not later than the first anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. Prohibits an officer from satisfying the requirements of this subsection or Section 1701.402(n) by taking an online course.

SECTION 4.02. Amends Section 1701.310, Occupations Code, by amending Subsections (a), to prohibit a person, except as provided by Subsection (e) (relating to the training and certification requirements of a person serving as a part-time county jailer corrections officer in an agency's correctional institutions division), from being appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program which includes 24 hours of training to facilitate interaction with persons with mental impairments, as required by TCOLE, in the operation of a county jail at a school operated or licensed by TCOLE.

SECTION 4.03. Amends Section 1701.310, Occupations Code, by adding Subsections (f), as follows:

(f) Requires a person assigned by the sheriff to the chief command position overseeing a county jail to, within 90 days of being assigned to the chief command position overseeing a county jail, pass the chief command position exam.

(1) Requires a person, if a person assigned to the chief command position overseeing a county jail fails the chief command position exam, to be immediately removed, and be unable to be reinstated until they pass the chief command position exam.

(2) Requires a person who fails the chief command position exam to wait a minimum of 90 days to retake the exam.

(3) Requires the sheriff of the county in which the jail is located to hold the chief command position until a new person is appointed, or the person originally assigned has passed the chief command position exam.

SECTION 4.03. Amends Section 1701.352, Occupations Code, by amending Subsections (b) and (e) and adding Subsection (j), as follows:

(b) Requires TCOLE to require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by TCOLE and consists of, for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that contain curricula incorporating the learning objectives developed by TCOLE regarding civil rights, racial sensitivity, implicit bias, and cultural diversity; and de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force. Redesignates existing Paragraph (C) as Paragraph (D). Makes a conforming change.

(e) Includes implicit bias in the list of education and training TCOLE is authorized to require a certain entity that appoints a certain officer to provide.

(j) Prohibits the education and training program on de-escalation techniques to facilitate interaction with members of the public from being provided as an online course.

SECTION 4.04. Amends Section 1701.402, Occupations Code, by amending Subsection (i) and adding Subsection (n), as follows:

(i) Requires an officer, as a requirement for an intermediate proficiency certificate, to complete an education and training program on civil rights, racial sensitivity, implicit bias, and cultural diversity established by TCOLE under Section 1701.253(c).

(n) Requires an officer, as a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, to complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by TCOLE under Section 1701.253(n).

SECTION 4.05. Requires TCOLE, not later than January 1, 2018, to establish or modify training programs as necessary to comply with Section 1701.253, Occupations Code, as amended by this article.

## ARTICLE 5. PRETEXT STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Amends Article 2.13, Code of Criminal Procedure, by adding Subsection (d), to prohibit the officer from conducting a search based solely on a person's consent to the search or making a stop for an alleged violation of a traffic law or ordinance as a pretext for investigating a violation of another penal law.

SECTION 5.02. Amends Article 2.132, Code of Criminal Procedure, by amending Subsections (b), (c), and (e) and adding Subsections (h) and (i), as follows:



(b) Requires each law enforcement agency's written policy on racial profiling to provide public education relating to the agency's complaint process, including providing the information regarding the complaint process on each ticket, citation, or warning issued by a peace officer and to require collection of information relating to all motor vehicle stops including whether a search was conducted and whether the peace officer used physical force against anyone during the stop. Deletes existing text requiring each law enforcement agency's written policy on racial profiling to require collection of information relating to motor vehicle stops in which a citation is issued and to arrests made as a result of those stops including information relating to whether a search was conducted and, if so, whether the individual detained consented to the search. Makes nonsubstantive changes.

(c) Prohibits the data collected as a result of the reporting requirements of this article from constituting prima facie evidence of racial profiling but provides that the data is admissible in a court of law as evidence of racial profiling.

(e) Makes no changes to this subsection.

(h) Requires a law enforcement agency to review certain collected data to determine whether the number of vehicles driven by a member of a particular race or ethnicity stopped by any peace officer employed by the agency is disproportionate to the population of that race or ethnicity in the county or municipality served by the agency.

(i) Requires the agency, if a law enforcement agency determines that the number of vehicles driven by a member of a particular race or ethnicity stopped by a peace officer is disproportionate, as described by Subsection (h), to conduct an investigation of the officer to determine whether the officer routinely stops vehicles the drivers of which are members of a particular racial or ethnic group for alleged violations of traffic laws or ordinances as a pretext for investigating violations of other penal laws.

SECTION 5.03. Amends Chapter 2, Code of Criminal Procedure, by adding Articles 2.1321 and 2.1322, as follows:

Art. 2.1321. RACIAL PROFILING INVESTIGATIONS. (a) Requires the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, to annually review the data collected by the agency on racial profiling to determine if racial profiling is potentially occurring on an agency-wide level or an individual peace officer may be engaging in racial profiling.

(b) Requires the agency, on a finding by the chief administrator of potential racial profiling on an agency-wide basis or by an individual peace officer, to initiate an investigation into the potential racial profiling.

(c) Requires the chief administrator of each law enforcement agency to annually certify to TCOLE that the chief administrator conducted the review required by Subsection (a).

(d) Requires TCOLE, on a finding by TCOLE that the chief administrator of a law enforcement agency intentionally failed to conduct a review required by Subsection (a), to begin disciplinary procedures against the chief administrator.

Art. 2.1322. REQUIRED RACIAL PROFILING COUNSELING AND TRAINING FOR CERTAIN PEACE OFFICERS. (a) Requires the law enforcement agency, if an investigation initiated under Article 2.132 (Law Enforcement Policy on Racial Profiling), or 2.1321 results in a finding of racial profiling, to provide appropriate counseling and training to any peace officer found to have engaged in racial profiling.

(b) Requires the counseling and training under Subsection (a) to emphasize understanding and respect for racial and cultural differences, address racial and

cultural biases, and include effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(c) Requires the law enforcement agency, if, after a peace officer completes the counseling and training under Subsection (a), the officer is again found to have engaged in racial profiling, to suspend the officer for not less than six months and require the officer to repeat the counseling and training.

SECTION 5.04. Amends Article 2.133, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires a peace officer who stops a motor vehicle for an alleged violation of a law or ordinance to report to the law enforcement agency that employs the officer information relating to the stop, including whether the officer conducted a search as a result of the stop and whether the officer issued a verbal or written warning or a citation as a result of the stop and whether the officer used physical force in conjunction with the arrest. Deletes existing text requiring a police officer who stops a motor vehicle for an alleged violation of a law or ordinance to report to the law enforcement agency that employs the officer information relating to the stop, including whether the person detained consented to the search.

(c) Requires the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, to make periodic random and unannounced reviews of motor vehicle stops by peace officers employed by the agency to ensure that the race or ethnicity of the person operating the motor vehicle is being properly identified in the report under Subsection (b).

SECTION 5.05. Amends Articles 2.134(c), (d), and (f), Code of Criminal Procedure, as follows:

(c) Requires a certain report to be submitted by the chief administrator of the law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, and requires the report include certain information to evaluate and compare the number of searches resulting from motor vehicle stops within the applicable jurisdiction and whether certain evidence was discovered in the course of those searches, and information relating the number of investigations initiated under Article 2.1321, and the outcomes of the investigations. Makes a conforming change.

(d) Makes no changes to this subsection.

(f) Prohibits the data collected as a result of the reporting requirements of this article from constituting prima facie evidence of racial profiling but provides the data is admissible in a court of law as evidence of racial profiling.

SECTION 5.06. Amends Article 2.137, Code of Criminal Procedure, as follows:

Art. 2.137. PROVISION OF FUNDING OR EQUIPMENT. (a) Requires DPS to adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purposes of providing counseling and training for peace officers to prevent racial profiling and installing video and audio equipment in law enforcement motor vehicles and motorcycles and including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. Deletes existing text referencing Article 2.135(a)(1)(A) (relating to the requirement that each law enforcement motor vehicle be equipped with video camera and transmitter activated equipment). Makes a nonsubstantive change.

(b) Requires DPS to collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purposes of providing counseling and training for peace officers to prevent racial profiling and installing video and audio equipment in law enforcement motor

vehicles and motorcycles. Deletes existing text referencing Article 2.135(a)(1)(A). Makes a nonsubstantive change.

(c) Requires the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, to receive funds or video and audio equipment from the state for the purposes of providing counseling and training for peace officers to prevent racial profiling and installing video and audio equipment in law enforcement motor vehicles and motorcycles, to certify to DPS that the law enforcement agency needs funds or video and audio equipment for those purposes. Deletes existing text referencing Article 2.135(a)(1)(A). Makes a nonsubstantive change.

(d) Requires the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, on receipt of funds or video and audio equipment from the state for the purposes of providing counseling and training for peace officers to prevent racial profiling and installing video and audio equipment in law enforcement motor vehicles and motorcycles, to certify to DPS that the law enforcement agency has installed and is using video and audio equipment for those purposes, rather than as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1). Makes a nonsubstantive change.

SECTION 5.07. Amends Article 2.1385(a), Code of Criminal Procedure, to increase the civil penalty the local law enforcement agency is liable for if the chief administrator of a local law enforcement agency intentionally fails to submit the required incident-based data from \$1,000 to \$10,000 for each violation.

SECTION 5.08. Amends Chapter 2, Code of Criminal Procedure, effective September 1, 2018, by adding Article 2.1386, as follows:

Art. 2.1386. MOTOR VEHICLE STOP INVESTIGATIONS. (a) Defines "law enforcement agency" and "motor vehicle stop."

(b) Requires each law enforcement agency to adopt and implement a detailed written policy regarding the administration of a motor vehicle stop investigation in accordance with this article, including the administrative penalties for violations of the policy. Authorizes a law enforcement agency to adopt the model policy promulgated by the Bill Blackwood Law Enforcement Management Institute of Texas or the agency's own policy.

(c) Prohibits a peace officer from conducting a roadside investigation during a motor vehicle stop for an offense other than the traffic violation without suspicion based on a preponderance of the evidence that the driver has committed the other offense, from continuing a roadside investigation during a motor vehicle stop into an offense other than the traffic violation after the driver has refused to consent to be searched unless the peace officer has additional suspicion based on a preponderance of the evidence that the driver has committed the other offense, or from arresting a driver during a motor vehicle stop for a traffic violation to conduct a search incident to arrest unless the officer has probable cause to believe that the driver has committed an offense more serious than a Class C misdemeanor.

(d) Requires a peace officer who violates Subsection (c) to be subject to an administrative penalty of not less than a one-day suspension.

SECTION 5.09. Amends Article 3.05, Code of Criminal Procedure, as follows:

Art. 3.05. RACIAL PROFILING. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes racial profiling to be identified through the examination of sufficient and evidence-based data analysis.

SECTION 5.10. Amends Article 14.06, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Requires, rather than authorizes, a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by a fine only, other than a certain offense, to, instead of taking the person before a magistrate, issue a certain citation to the person. Deletes existing text specifying a Class C misdemeanor.

(b-1) Authorizes a peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by a fine only under Chapter 106 (Provisions Relating to Age), Alcoholic Beverage Code, to, instead of taking the person before a magistrate, issue to the person a citation that contains written notice of the time and place the person is required to appear before a magistrate, the name and address of the person charged, and the offense charged.

SECTION 5.11. Amends Section 543.004(a), Transportation Code, to require an officer to issue a written notice to appear if the offense charged is a misdemeanor under this subtitle (Rules of the Road) that is punishable by a fine only, rather than speeding or a violation of the open container law, Section 49.03, Penal Code.

SECTION 5.12. Amends Subchapter A, Chapter 543, Transportation Code, effective January 1, 2018, by adding Section 543.0045, as follows:

Sec. 543.0045. NOTIFICATION REQUIRED DURING TRAFFIC STOP. (a) Requires an officer who stops a motor vehicle as a result of a person's alleged commission of a misdemeanor under this subtitle that is punishable by a fine only to promptly notify the person that the alleged offense is a misdemeanor under this subtitle that is punishable by a fine only and that the officer is prohibited from arresting a person solely on the basis of that offense.

(b) Requires TCOLE, by rule, to specify the language that is required to be included in the notification described by Subsection (a).

SECTION 5.13. Repealer: Article 2.135 (Partial Exemption for Agencies Using Video and Audio Equipment), Code of Criminal Procedure.

SECTION 5.14. Provides that Article 2.13(d), Code of Criminal Procedure, as added by this article, applies only to a motor vehicle stop or search that occurs on or after the effective date of this Act.

SECTION 5.15. Provides that Articles 2.132 and 2.134, Code of Criminal Procedure, as amended by this article, apply only to a report covering a calendar year beginning on or after January 1, 2018.

SECTION 5.16. Makes application of Articles 2.132(h) and (i), 2.1321, and 2.1322, Code of Criminal Procedure, as added by this article, prospective.

SECTION 5.17. Requires TCOLE, not later than September 1, 2018, to evaluate and change the guidelines for compiling and reporting information required under Article 2.134, Code of Criminal Procedure, as amended by this article, to withstand academic scrutiny.

SECTION 5.18. (a) Requires the Bill Blackwood Law Enforcement Management Institute of Texas, in consultation with large, medium, and small law enforcement agencies, law enforcement associations, and community organizations engaged in the development of law enforcement policy on behalf of the public, to, not later than December 31, 2017, develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated

training materials for conducting a motor vehicle stop, in accordance with Article 2.1386, Code of Criminal Procedure, as added by this article.

(b) Requires each law enforcement agency of this state, not later than September 1, 2018, to adopt the policy required by Article 2.1386, Code of Criminal Procedure, as added by this article.

SECTION 5.19. Requires TCOLE, not later than December 1, 2017, to adopt the rules required by Section 543.0045(b), Transportation Code, as added by this article.

SECTION 5.20. Makes application of this article prospective.

#### ARTICLE 6. DISCIPLINARY PROCEDURES FOR PEACE OFFICERS.

SECTION 6.01. Amends the heading to Subchapter B, Chapter 614, Government Code, effective September 1, 2018, to read as follows:

##### SUBCHAPTER B. COMPLAINT AGAINST PEACE OFFICER OR FIRE FIGHTER

SECTION 6.02. Amends Section 614.021, Government Code, effective September 1, 2018, as follows:

Sec. 614.021. APPLICABILITY OF SUBCHAPTER. (a) Provides that, except as provided by Subsection (b), this subchapter applies only to a complaint against a peace officer under Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, or other law who is appointed or employed by the State of Texas or a political subdivision of this state, including a political subdivision that is covered by a meet and confer or collective bargaining agreement under Chapter 142 (Assistance, Benefits, and Working Conditions of Municipal Officers and Employees), 143 (Municipal Civil Service for Firefighters and Police Officers), or 174 (Fire and Police Employee Relations), Local Government Code. Deletes existing text providing that this subchapter applies only to a complaint against a law enforcement officer of the State of Texas, including an officer of DPS or of the Texas Alcoholic Beverage Commission, or a peace officer under Article 2.12, Code of Criminal Procedure, or other law who is appointed or employed by a political subdivision of this state. Makes nonsubstantive changes.

(b) Provides that this subchapter does not apply to a firefighter employed by a political subdivision, rather than does not apply to a peace officer or fire fighter appointed or employed by a political subdivision, that is covered by a certain meet and confer bargaining agreement. Provides that this subchapter does not alter an at-will employment relationship between the employee and the political subdivision. Makes conforming and nonsubstantive changes.

SECTION 6.03. Amends Section 614.022, Government Code, effective September 1, 2018, as follows:

Sec. 614.022. New Heading: CERTAIN COMPLAINTS TO BE IN WRITING AND SIGNED BY COMPLAINANT. Requires a complaint filed by a member of the public against a fire fighter, detention officer, or county jailer, to be considered by the head of a fire department or local law enforcement agency, rather than the head of a state agency, the head of a fire department, or local law enforcement agency, to be in writing and signed by the person making the complaint.

SECTION 6.04. Amends Subchapter B, Chapter 614, Government Code, effective September 1, 2018, by adding Sections 614.0225, 614.0226, and 614.0227, as follows:

Sec. 614.0225. STANDARD PROCEDURES FOR COMPLAINT AGAINST PEACE OFFICER BY A MEMBER OF THE PUBLIC. (a) Requires each law enforcement agency to adopt and implement standard procedures for processing a complaint filed by a member of the public including members of the public who are incarcerated, against a

peace officer in accordance with this subchapter. Authorizes a law enforcement agency to adopt the model standard procedures promulgated by the Bill Blackwood Law Enforcement Management Institute of Texas or the agency's own procedures.

(b) Requires a law enforcement agency to facilitate the filing of a written complaint against a peace officer by a member of the public by providing a means to complain in person, by mail, by e-mail, by telephone, and on the agency's Internet website.

(c) Requires a law enforcement agency to facilitate the filing of a complaint by a member of the public against a peace officer by providing a means of a friend or family member to file on the behalf of the victim.

Sec. 614.0226. REQUIREMENTS FOR COMPLAINT FILED BY A MEMBER OF THE PUBLIC AGAINST PEACE OFFICER. Requires a complaint filed by a member of the public against a peace officer to include certain information.

Sec. 614.0227. REQUIREMENTS FOR CITATION. Requires a citation issued by a peace officer to include the e-mail address, telephone number, Internet address, and physical location where a complaint can be filed by a member of the public against the peace officer and basic instructions for filing the complaint.

SECTION 6.05. Amends Section 614.023, Government Code, effective September 1, 2018, as follows:

Sec. 614.023. New heading: COPY OF COMPLAINT TO BE GIVEN TO FIRE FIGHTER, DETENTION OFFICER, OR COUNTY JAILER. (a) Requires a copy of a signed complaint filed by a member of the public against a fire fighter, detention officer, or county jailer, rather than a law enforcement officer of this state or a firefighter, detention officer, county jailer, or peace officer appointed or employed by a political subdivision of this state, to be given to the employee, rather than the officer or employee, within a reasonable time after the complaint is filed.

(b) Prohibits disciplinary action from being taken against the employee, rather than the officer or employee, unless a copy of the signed complaint is given to the employee. Makes a conforming change.

(c) Prohibits the employee, rather than officer or employee, in addition to the requirement of Subsection (b), from being indefinitely suspended or terminated from employment based on the subject matter of the complaint filed by a member of the public unless certain conditions are met.

SECTION 6.06. Amends Subchapter B, Chapter 614, Government Code, effective September 1, 2018, by adding Sections 614.024, 614.025, 614.026, and 614.027, as follows:

Sec. 614.024. COPY OF COMPLAINT FILED BY A MEMBER OF THE PUBLIC TO BE GIVEN TO PEACE OFFICER. (a) Requires a copy of a complaint filed by a member of the public against a peace officer to be given to the peace officer within a reasonable time after the complaint is filed.

(b) Prohibits disciplinary action from being taken against the peace officer unless a copy of the complaint is given to the peace officer.

(c) Prohibits the peace officer, in addition to the requirement of Subsection (b), from being indefinitely suspended or terminated from employment based on the subject matter of the complaint unless the complaint is investigated and the evidence proves the allegation of misconduct.

(d) Provides that this subchapter does not alter the at-will employment relationship between the peace officer and the law enforcement agency.

Sec. 614.025. INVESTIGATION OF COMPLAINT FILED BY A MEMBER OF THE PUBLIC AGAINST PEACE OFFICER. (a) Requires a law enforcement agency to investigate each complaint filed by a member of the public against a peace officer and review the available evidence related to the complaint, including any audio or video recording and any report filed by the peace officer.

(b) Requires a law enforcement agency to give a copy of any audio or video evidence related to a complaint against a peace officer to the complainant on request. Provides that this section does not prevent a law enforcement agency from asserting that any confidential material is exempt from disclosure under Sections 552.103 (Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision), 552.107 (Exception: Certain Legal Matters), or 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), Government Code, or under any other basis permitted by law.

(c) Requires the agency, if the law enforcement agency determines that there is a basis for further investigation into a possible violation by a peace officer, to notify the peace officer and the complainant that further investigation will be conducted.

(d) Requires the law enforcement agency, if the preliminary review of the evidence clearly indicates that there is no basis, in law or policy, for the complaint filed by a member of the public, to notify the peace officer and the complainant that the complaint is without merit.

(e) Requires an investigation to be completed not later than the 180th day after the date a complaint is filed. Requires the law enforcement agency to provide the complainant an update on the progress of the investigation at least once every two months during that period.

Sec. 614.026. APPEAL OF COMPLAINT FILED BY A MEMBER OF THE PUBLIC AGAINST PEACE OFFICER. (a) Requires a law enforcement agency to adopt and implement procedures for the appeal by a complainant of a decision to dismiss a complaint filed by a member of the public by the complainant against a peace officer because the complaint is determined to be without merit. Requires the procedures to allow the complainant to provide the agency additional evidence relating to the complaint, including witness statements.

(b) Authorizes a peace officer to appeal a decision relating to a complaint filed by a member of the public against the peace officer under the procedures established under applicable law, including under a meet and confer agreement, a collective bargaining agreement, or Chapter 142, 143, or 174, Local Government Code.

Sec. 614.027. DATA RELATING TO COMPLAINTS FILED BY MEMBERS OF THE PUBLIC AGAINST PEACE OFFICERS. (a) Requires a law enforcement agency to provide data relating to complaints filed by members of the public against peace officers of the agency, including the outcome of each complaint, to the Institute for Urban Policy Research & Analysis at The University of Texas at Austin.

(b) Requires a law enforcement agency to adopt the model standard procedures promulgated by the Bill Blackwood Law Enforcement Management Institute of Texas or the agency's own procedures to implement this section.

SECTION 6.07. Amends Section 142.067, Local Government Code, as follows:

Sec. 142.067. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) Provides an exception under Subsection (b) and makes a nonsubstantive change.

(b) Prohibits an agreement under this subchapter (Local Control of Police Officer Employment Matters in Certain Municipalities) from conflicting with and

provides that the agreement does not supersede Subchapter B, Chapter 614, Government Code, or Article 2.1386, Code of Criminal Procedure.

SECTION 6.08. Amends Section 143.307, Local Government Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

- (a) Creates an exception under Subsection (d) and makes a nonsubstantive change.
- (b) Creates an exception under Subsection (d) and makes a nonsubstantive change.
- (d) Prohibits an agreement under this subchapter (Fire Fighter and Police Officer Employment Matters in Certain Municipalities) affecting police officers from conflicting with and provides that the agreement does not supersede Subchapter B, Chapter 614, Government Code, or Article 2.1386, Code of Criminal Procedure.

SECTION 6.09. Amends Section 143.361, Local Government Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

- (a) Creates an exception under Subsection (d) and makes a nonsubstantive change.
- (b) Creates an exception under Subsection (d) and makes a nonsubstantive change.
- (d) Prohibits an agreement under this subchapter (Local Control of Police Officer Employment Matters in Municipalities With Population of 1.5 Million or More) from conflicting with and provides that the agreement does not supersede Subchapter B, Chapter 614, Government Code, or Article 2.1386, Code of Criminal Procedure.

SECTION 6.10. Amends Section 174.005, Local Government Code, as follows:

- Sec. 174.005. PREEMPTION OF OTHER LAW. (a) Creates an exception under Subsection (b). Creates this subsection from existing text and makes a nonsubstantive change.
- (b) Provides that this chapter does not authorize the adoption or implementation of an agreement that conflicts with Subchapter B, Chapter 614, Government Code, or Article 2.1386, Code of Criminal Procedure.

SECTION 6.11. Makes application of Sections 142.067(b), 143.307(d), 143.361(d), and 174.005(b), Local Government Code, as added by this article, prospective to September 1, 2018.

SECTION 6.12. (a) Requires the Bill Blackwood Law Enforcement Management Institute of Texas, in consultation with large, medium, and small law enforcement agencies, law enforcement associations, and community organizations engaged in the development of law enforcement policy on behalf of the public to, not later than December 31, 2017, develop, adopt, and disseminate to all law enforcement agencies in this state the model standard procedures for a law enforcement agency to process a complaint filed by a member of the public against a peace officer, in accordance with Subchapter B, Chapter 614, Government Code, as amended by this article and the model standard procedures for a law enforcement agency to report data relating to complaints against peace officers by members of the public to the Institute for Urban Policy Research & Analysis at The University of Texas at Austin, under Section 614.027, Government Code, as added by this article.

- (b) Requires each law enforcement agency of this state to, not later than September 1, 2018, adopt the procedures required by Subchapter B, Chapter 614, Government Code, as amended by this article.

## ARTICLE 7. INDEPENDENT OMBUDSMAN

SECTION 7.01. Amends Section 261.001, Human Resources Code, by adding Subsection (3) and (4) to define "department" and "county jail."



SECTION 7.02. Amends Section 261.002, Human Resources Code, to provide that the office of independent ombudsman (office) is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the Texas Juvenile Justice Department (TJJD), including a child released under supervision before final discharge, and adults confined in county jails.

SECTION 7.03. Amends Section 261.056, Human Resources Code, by amending Subsection (a), to require TJJD to allow any child committed to the TJJD and the sheriff to allow any adult confined in a county jail to communicate with the independent ombudsman or an assistant to the ombudsman.

SECTION 7.04. Amends Section 261.057, Human Resources Code, to require the independent ombudsman to promote certain awareness among the public and the children committed to TJJD and among persons confined in county jails.

SECTION 7.05. Amends Section 261.058, Human Resources Code, by amending Subsection (b), to require the office and the Texas Juvenile Justice Board to adopt rules necessary to implement Section 261.060 (Review and Format of Reports) including rules that establish procedures for TJJD and county jails to review and comment on reports of the office and for TJJD and county jails to expedite or eliminate review of and comment on a report due to an emergency or a serious or flagrant circumstance described by Section 261.055(b) (relating to the requirement that the independent ombudsman immediately report to certain individuals certain information).

SECTION 7.06. Amends Section 261.101, Human Resources Code, by amending Subsection (a), as follows:

Sec. 261.101. DUTIES AND POWERS. (a) Requires the independent ombudsman to:

- (1) makes no changes to this subdivision;
- (1-a) evaluate the delivery of services to adults in county jails to ensure that the rights of adults in county jails are fully observed;
- (2) replaces a reference to child with person;
- (3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that a child committed to TJJD, an adult in county jail, or the child's family may be in need of assistance from the office or a systemic issue in TJJD's or a county jail's provision of services is raised by a complaint;
- (4) review or inspect periodically the facilities and procedures of any institution or residence in which a child has been placed by TJJD, and the facilities and procedures of any county jail in which a person is confined, whether public or private, to ensure that the rights of children and the health and safety of persons confined in county jails are fully protected, rather than observed;
- (5) provide assistance to a confined person, child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child or confined person;
- (6) makes no changes to this subdivision;
- (7) recommend changes in any procedure relating to the treatment of children committed to TJJD, and adults in county jails.
- (8) through (10) makes no changes to these subdivisions;

(11) report a possible standards violation by a local juvenile probation department to the appropriate division of TJJD or a possible standards violation by a county jail to TCJS;

(12) makes nonsubstantive changes; and

(13) immediately report the substantiated findings of any investigation related to the health or safety of a person confined in a county jail to the sheriff and commissioners court of the county.

SECTION 7.07. Amends Section 261.104, Human Resources Code, by adding Subsection (c), to require the office and TCJS to enter into a memorandum of understanding concerning the most efficient manner in which to share information with one another and opportunities for collaboration between the office and TCJS.

SECTION 7.08. Amends Section 261.151, Human Resources Code, by amending Subsection (c), to require a local law enforcement agency to allow the independent ombudsman access to its records relating to any child in the care or custody of TJJD or to any records relating to a person confined in a county jail.

SECTION 7.09. Amends Section 261.152, Human Resources Code, to require the independent ombudsman to have access to the records of a private entity that relate to a child committed to TJJD or to a person confined in a county jail.

#### ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date, except as otherwise provided by this Act: September 1, 2017.