

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1120
By: West
Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 77th Texas Legislature, Regular Session, 2001, passed S.B. 1074 to outlaw the controversial practice of racial profiling by law enforcement officers. Under that legislation, an annual report is issued by law enforcement agencies. Since the bill's passage, racial profiling continues to be a topic of discussion. Racial profiling is a national issue.

Subsequent meetings with law enforcement and advocacy groups have identified areas of existing law that needs to be addressed. Annual reports have not made it possible to determine whether racial profiling exists, but those reports indicate that there are disproportionate statistics associated with stops and searches of minorities when compared to other drivers. There has also been a failure by some law enforcement agencies to make the annual report required by current statute available to the public.

The goal of C.S.S.B. 1120 is to address those concerns and to refine the system of data gathering and analysis to be used in determining possible incidences of racial profiling.

Presently there is no centralized repository for the collection of reports required by state law.

C.S.S.B. 1120 amends current law relating to reports on racial profiling in connection with motor vehicle stops, and providing a penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 2.132, Code of Criminal Procedure, by amending Subsections (a), (b), (d), and (e) and adding Subsection (g), as follows:

(a) Defines "motor vehicle stop," and redefines "law enforcement agency" and "race or ethnicity."

(b) Requires each law enforcement agency (agency) in this state to adopt a detailed written policy on racial profiling that is required to include certain things, including a collection of information relating to motor vehicle, rather than traffic, 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, rather than person, detained consented to the search; and requiring the chief administrator of the agency, regardless of whether the administrator is elected, employed, or appointed, to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state. Makes nonsubstantive changes.

(d) and (e) Make conforming changes.

(g) Requires the Commission on Law Enforcement Officer Standards and Education (commission), on a finding by the commission that the chief administrator of a law

enforcement agency intentionally failed to submit a report required under Subsection (b)(7) (relating to an annual report submitted by the agency), to begin disciplinary procedures against the chief administrator.

SECTION 2. Amends Article 2.133, Code of Criminal Procedure, as follows:

Art. 2.133. New heading: REPORTS REQUIRED FOR MOTOR VEHICLE STOPS.

(a) Defines "race or ethnicity." Deletes existing definition of "pedestrian stop."

(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 certain information relating the stop, including certain physical descriptions of any person operating the motor vehicle, rather than each person, who is detained as a result of the stop; the initial reason for the stop, rather than the traffic law or ordinance alleged to have been violated or the suspected offense; whether any contraband or other evidence was discovered in the course of the search and a description of the contraband or evidence, rather than the type of contraband discovered; the reason for the search, including whether any contraband or other evidence was in plain view; whether any probable cause or reasonable suspicions existed to perform the search; or whether the search was performed as a result of the towing of the motor vehicle or the arrest of any person in the motor vehicle; whether the officer made an arrest as a result of the stop or the search, including a statement of whether the arrest was based on a violation of the Penal Code, a violation of a traffic law or ordinance, or an outstanding warrant and a statement of the offense charged; whether the officer issued a written warning or a citation as a result of the stop, rather than issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

SECTION 3. Amends Article 2.134 (Compilation and Analysis of Information Collected), Code of Criminal Procedure, by amending Subsections (a) through (e) and adding Subsection (g), as follows:

(a) Defines "motor vehicle stop" and "race or ethnicity." Deletes existing definition of "pedestrian stop."

(b) Requires each law enforcement agency, rather than each local law enforcement agency, not later than March 1 of each year, to submit a report containing the incident-based data, rather than information, compiled during the previous calendar year to the commission and, if the law enforcement agency is a local law enforcement agency, to the governing body of each county or municipality served by the agency.

(c) Requires a report required under Subsection (b) 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 to include a comparative analysis of the information compiled under Article 2.133 to evaluate and compare the number of motor vehicle stops, within the applicable jurisdiction, of persons who are recognized as racial or ethnic minorities and persons who are not recognized as racial or ethnic minorities, rather than to determine the prevalence of racial profiling by peace officers employed by the agency; and examine the disposition of motor vehicle stops, rather than traffic and pedestrian stops, made by officers employed by the agency, categorized according to the race or ethnicity of the affected persons, as appropriate, including any searches resulting from stops within the applicable jurisdiction, rather than the stops; and information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) Prohibits a report required under Subsection (b) from including identifying information about a peace officer who makes a motor vehicle, rather than a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer.

(e) Requires the commission, in accordance with Section 1701.162, Occupations Code, to develop guidelines for compiling and reporting information as required by this article.

(g) Requires the commission, on a finding by the commission that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), to begin disciplinary procedures against the chief administrator.

SECTION 4. Amends Article 2.135, Code of Criminal Procedure, as follows:

Art. 2.135. New heading: PARTIAL EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) Provides that a peace officer is exempt from the reporting requirement under Article 2.133 and the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is exempt from the compilation, analysis, and reporting requirements under Article 2.134, if certain conditions exist. Makes conforming changes.

(b) Makes conforming changes.

(c) Makes no changes to this subsection.

(d) Defines "motor vehicle stop."

SECTION 5. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.1385, as follows:

Art. 2.1385. CIVIL PENALTY. (a) Provides that if the chief administrator of a local law enforcement agency intentionally fails to submit the incident-based data as required by Article 2.134, the agency is liable to the state for a civil penalty in the amount of \$1,000 for each violation. Authorizes the attorney general to sue to collect a civil penalty under this subsection.

(b) Requires the executive director of a state law enforcement agency that intentionally fails to submit the incident-based data as required by Article 2.134, from money appropriated to the agency for the administration of the agency, to remit to the comptroller of public accounts (comptroller) the amount of \$1,000 for each violation.

(c) Requires money collected under this article to be deposited in the state treasury to the credit of the general revenue fund.

SECTION 6. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.022, as follows:

Art. 102.022. COSTS ON CONVICTION TO FUND STATEWIDE REPOSITORY FOR DATA RELATED TO CIVIL JUSTICE. (a) Defines "moving violation."

(b) Requires a defendant convicted of a moving violation in a justice court, county court, county court at law, or municipal court to pay a fee of 10 cents as a cost of court.

(c) Provides that, in this article, a person is considered convicted if certain actions are taken.

(d) Requires the clerks of the respective courts to collect the costs described by this article. Requires the clerk to keep separate records of the funds collected as costs under this article and to deposit the funds in the county or municipal treasury, as appropriate.

(e) Requires the custodian of a county or municipal treasury to take certain actions.

(f) Authorizes a county or municipality to retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee of the custodian of the county or municipal treasury complies with Subsection (e).

(g) Requires the custodian of the treasury to file the report required for the quarter in the regular manner and authorizes the custodian of the treasury to state that no funds were collected, if no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter.

(h) Requires the comptroller to deposit the funds received under this article to the credit of the Civil Justice Data Repository fund in the general revenue fund, to be used only by the commission to implement duties under Section 1701.162, Occupations Code.

(i) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 7. (a) Amends Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to conform to the amendments made to Section 102.061, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and further amends it, as follows:

Sec. 102.061. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. Requires the clerk of a statutory county court to collect under the Code of Criminal Procedure on conviction of a defendant certain fees, including a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... \$50, rather than \$5; and a civil justice fee (Art. 102.022, Code of Criminal Procedure) ... \$0.10.

(b) Repealer: Section 102.061 (Additional Court Costs on Conviction in Statutory County Court), Government Code, as amended by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007. Provides that Section 102.061, Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION 8. (a) Amends Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to conform to the amendments made to Section 102.081, Government Code, by Chapter 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and further amends it, as follows:

Sec. 102.081. ADDITIONAL COURT COSTS ON CONVICTION IN STATUTORY COUNTY COURT: CODE OF CRIMINAL PROCEDURE. Requires the clerk of a statutory county court to collect under the Code of Criminal Procedure on conviction of a defendant certain fees, including a juvenile delinquency prevention and graffiti eradication fee (Art. 102.0171, Code of Criminal Procedure) ... \$50, rather than \$5; and a civil justice fee (Art. 102.022, Code of Criminal Procedure) ... \$0.10.

(b) Repealer: Section 102.081 (Additional Court Costs on Conviction in County Court), Government Code, as amended by Chapter 1053, Acts of the 80th Legislature, Regular Session, 2007. Provides that Section 102.081, Government Code, as amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, to reorganize and renumber that section, continues in effect as further amended by this section.

SECTION 9. Amends Section 102.101, Government Code, as follows:

Sec. 102.101. ADDITIONAL COURT COSTS ON CONVICTION IN JUSTICE COURT: CODE OF CRIMINAL PROCEDURE. Requires a clerk of a justice court to collect certain fees and costs under the Code of Criminal Procedure on conviction of a

defendant, including for a civil justice fee (Art. 102.022, Code of Criminal Procedure) ... \$0.10.

SECTION 10. Amends Section 102.121, Government Code, as follows:

Sec. 102.121. ADDITIONAL COURT COSTS ON CONVICTION IN MUNICIPAL COURT: CODE OF CRIMINAL PROCEDURE. Requires the clerk of a municipal court to collect certain fees and costs on conviction of a defendant, including a civil justice fee (Art. 102.022, Code of Criminal Procedure) ... \$0.10.

SECTION 11. Amends Subchapter D, Chapter 1701 (Law Enforcement Officers), Occupations Code, by adding 1701.162, as follows:

Sec. 1701.162. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. Requires the commission to collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. Requires the commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the University of North Texas, and the Texas Police Chiefs Association to develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

SECTION 12. Amends Section 1701.501(a) (relating to penalties for a license holder who is in violation of this chapter or a commission rule), Occupations Code, as follows:

(a) Requires the commission, except as provided by Subsection (d), to revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure.

SECTION 13. (a) Provides that the requirements of Articles 2.132, 2.133, and 2.134, Code of Criminal Procedure, as amended by this Act, relating to the compilation, analysis, and submission of incident-based data apply only to information based on a motor vehicle stop occurring on or after January 1, 2010.

(b) Makes application of this Act prospective.

SECTION 14. Effective date: September 1, 2009.