

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1849
By: Whitmire
Criminal Justice
5/3/2017
Committee Report (Substituted)

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 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. (Original Author's / Sponsor's Statement of Intent)

C.S.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, to the confinement, conviction, or release of those individuals, and to grants supporting populations that are more likely to interact frequently with law enforcement.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Jail Standards in SECTIONS 3.05 (Section 511.009, Government Code), SECTION 3.06 (Section 511.009, Government Code), SECTION 3.07 (Section 511.019, Government Code), and SECTION 4.01 (Section 511.00905, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Public Safety (DPS) is modified in SECTION 5.05 (Article 2.137, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to DPS is rescinded in SECTION 5.07 (Section 2.135, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SHORT TITLE

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

ARTICLE 2. IDENTIFICATION AND DIVERSION OF AND SERVICES FOR PERSONS SUSPECTED OF HAVING MENTAL ILLNESS, AN INTELLECTUAL DISABILITY, OR A SUBSTANCE ABUSE ISSUE

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) Requires the sheriff, not later than 12 hours, rather than 72 hours, after receiving credible information that may establish reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability, including observation of the defendant's behavior immediately before, during, and after the defendant's arrest and the results of any previous assessment of the defendant, to provide written or electronic notice of the information to the magistrate. 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).

(b) and (c) Makes conforming changes.

(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 ISSUE. Requires each law enforcement agency to make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency'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 mental health crisis or substance abuse issue 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 the purpose of providing services to those persons.

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 two or more counties, each with a population of less than 100,000, to form a joint plan under Subsection (a).

ARTICLE 3. BAIL, PRETRIAL RELEASE, AND COUNTY JAIL STANDARDS

SECTION 3.01. 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 3.02. Amends Articles 17.032(b) and (c), Code of Criminal Procedure, as follows:

(b) Requires a magistrate to release a defendant on personal bond unless good cause is shown otherwise if the defendant is examined by the local mental health or intellectual and developmental authority or a certain other mental health expert and an applicable expert, in a certain written assessment, recommends mental health treatment or intellectual disability treatment for the defendant, as applicable. Changes references to mental retardation to intellectual disability or intellectual and developmental disability, changes a reference to the Texas Department of Mental Health and Mental Retardation (TXMHMR) to DSHS, and makes conforming changes.

(c) Makes conforming changes.

SECTION 3.03. Amends Article 25.03, 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 case of felony, is on bail at the time the indictment is presented, to deliver a copy of the indictment to the accused or the accused's 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 of the same on request to the accused or his counsel.

SECTION 3.04. Amends Article 25.04, Code of Criminal Procedure, as follows:

Art. 25.04. IN MISDEMEANOR. Requires the clerk, in misdemeanors, to deliver a copy of the indictment or information to the accused or the accused's counsel at the earliest possible time before trial. Deletes existing text providing that, in misdemeanors, it is not necessary before trial to furnish the accused with a copy of the indictment or information,

but that he or his counsel is authorized to demand a copy which is then required to be given as early as possible.

SECTION 3.05. Reenacts Section 511.009(a), Government Code, as amended by Chapters 281 (H.B. 875), 648 (H.B. 549), and 688 (H.B. 634), Acts of the 84th Legislature, Regular Session, 2015, and amends it, as follows:

(a) Requires the Texas Commission on Jail Standards (TCJS) to:

(1) through (18) makes no changes to these subdivisions;

(19) and (20) makes nonsubstantive changes;

(21) redesignates existing text of Subdivision (20) as Subdivision (21) and makes a nonsubstantive change;

(22) redesignates existing text of Subdivision (20) as Subdivision (22) and makes a nonsubstantive change;

(23) adopt reasonable rules and procedures establishing minimum standards regarding the management of an intoxicated prisoner; and

(24) adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that establish certain requirements for a county jail.

SECTION 3.06. Amends Section 511.009, Government Code, by adding Subsection (d), as follows:

(d) Requires TCJS to adopt reasonable rules and procedures establishing minimum standards regarding the continuity of prescription medications for the care and treatment of prisoners. Requires that the rules and procedures require a qualified medical professional to review, as soon as possible, any prescription medication a prisoner is taking when the prisoner is taken into custody.

SECTION 3.07. Amends Chapter 511, Government Code, by adding Sections 511.019, 511.020, and 511.021, as follows:

Sec. 511.019. PRISONER SAFETY FUND. (a) Provides that the prisoner safety fund (fund) is a dedicated account in the general revenue fund.

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

(c) Authorizes money in the fund to be appropriated only to TCJS to pay for capital improvements that are required under section 511.009(a)(24).

(d) Requires TCJS, by rule, to establish a grant program to provide grants to counties to fund capital improvements described by Subsection (c). Authorizes TCJS to only provide a grant to a county for capital improvements to a county jail with a capacity of not more than 96 prisoners.

Sec. 511.020. SERIOUS INCIDENTS REPORT. (a) Requires the sheriff of each county to report to TCJS, on or before the fifth day of each month, regarding the concurrence during the preceding month of certain events.

(b) Requires TCJS to prescribe a form for the report required by Subsection (a).

(c) Provides that information reported under Subsection (a) is public information subject to an open records request under Chapter 552 (Public Information).

Sec. 511.021. INDEPENDENT INVESTIGATION OF DEATHS OCCURRING IN COUNTY JAIL. (a) Requires the Texas Department of Public Safety (DPS), on the death of a prisoner in a county jail, to appoint a law enforcement agency other than the local law enforcement agency that operates the county jail or that otherwise has jurisdiction over the area in which the jail is located, to investigate the death as soon as possible and to notify TCJS of the agency's appointment.

(b) Requires the sheriff's office that operates the county jail where the prisoner's death occurred to conduct an investigation into the death until the law enforcement agency appointed under Subsection (a) begins its investigation.

(c) Requires the local law enforcement agency to give all evidence to and cooperate fully with the law enforcement agency appointed under Subsection (a) to investigate the prisoner's death.

SECTION 3.08. Makes application of Article 17.032, Code of Criminal Procedure, as amended by this article, prospective.

SECTION 3.09. Requires TCJS, not later than January 1, 2018, to adopt the rules and procedures required by Sections 511.009(a)(23) and (d), Government Code, as added by this article, and prescribe the form required by Section 511.020(b), Government Code, as added by this article.

SECTION 3.10. Requires TCJS, not later than September 1, 2018, to adopt the rules and procedures required by Section 511.009(a)(24), Government Code, as added by this Article. Requires a county jail, on and after September 1, 2020, to comply with any rule or procedure adopted by TCJS under Section 511.009(a)(24), Government Code, as added by this article.

SECTION 3.11. 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.

ARTICLE 4. PEACE OFFICER AND COUNTY JAILER TRAINING

SECTION 4.01. Amends Chapter 511, Government Code, by adding Section 511.00905, as follows:

Sec. 511.00905. JAIL ADMINISTRATOR POSITION; EXAMINATION REQUIRED.

(a) Requires the Texas Commission on Law Enforcement (TCOLE) to develop and TCJS to approve an examination for a person assigned to the jail administrator position overseeing a county jail.

(b) Requires TCJS to adopt rules requiring a person, other than a sheriff, assigned to the jail administrator position overseeing a county jail to pass the examination not later than the 180th day after the date the person is assigned to that position. Requires the rules to provide that a person who fails the examination is authorized to be immediately removed from the position and is prohibited from being reinstated until the person passes the examination.

(c) Requires the sheriff of a county to perform the duties of the jail administrator position at any time there is not a person available who satisfies the examination requirements of this section.

(d) Requires TCJS to provide for the examination to be available at testing centers available at testing centers approved by TCOLE throughout this state. Requires the contract, if TCJS contracts with a testing service to administer and grade the examination, to authorize the service to collect a reasonable fee not to exceed \$50 from each examinee.

SECTION 4.02. Amends Section 1701.253, Occupations Code, by amending Subsections (c) and (j) and adding Subsection (n), as follows:

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

(j) Requires TCOLE, as part of the minimum curriculum requirements, to require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. Makes a nonsubstantive change.

(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 resulting in bodily injury. Requires an officer to complete the program to be promoted to the next rank or level as an officer.

SECTION 4.03. Amends Section 1701.310, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Prohibits a person, except as provided by Subsection (e) (relating to the training and certification requirements of a certain person serving as a part-time county jailer), from being appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by TCOLE, in the operation of a county jail at a school operated or licensed by TCOLE. Requires the program to include a mental health first aid training program provided by a local mental health authority under Section 1001.203 (Grants for Training Certain Educators in Mental Health First Aid), Health and Safety Code.

(a-1) Prohibits a person other than a sheriff from serving in the jail administrator position of a county jail unless the person satisfies the examination requirement of Section 511.00905, Government Code.

SECTION 4.04. Amends Sections 1701.352(b) and (e), Occupations Code, 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, including 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 resulting in bodily injury. 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.

SECTION 4.05. 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, including 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 4.06. Requires TCOLE, not later than March 1, 2018, to develop and TCJS to approve the examination required by Section 511.00905, Government Code, as added by this article.

SECTION 4.07. (a) 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.

(b) Provides that the minimum curriculum requirements under Section 1701.253(j), Occupations Code, as amended by this article, apply only to a peace officer who first begins to satisfy those requirements on or after March 1, 2018.

SECTION 4.08. (a) Provides that Section 1701.310, Occupations Code, as amended by this article, takes effect January 1, 2018.

(b) Requires a person in the position of a county jailer on September 1, 2017, to comply with Section 1701.310(a), Occupations Code, as amended by this article, not later than January 1, 2019.

ARTICLE 5. MOTOR VEHICLE STOPS, RACIAL PROFILING, AND ISSUANCE OF CITATIONS

SECTION 5.01. Amends Article 2.13, Code of Criminal Procedure, by adding Subsection (d), as follows:

(d) Prohibits the officer from conducting a search based solely on a person's consent to the search unless:

- (1) the officer verbally and in writing informs the person of the person's right to refuse the search; and
- (2) the person signs a certain acknowledgement, or makes a certain verbal statement that is recorded on the officer's body worn camera or the camera in the officer's motor vehicle or motorcycle.

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

(b) Requires each law enforcement agency's written policy on racial profiling to:

- (1) through (3) makes no changes to these subdivisions;
- (4) provide public education relating to the agency's compliment and complaint process, including providing the telephone number, mailing address, and e-mail address to make a compliment or complaint with respect to each ticket, citation, or warning issued by a peace officer;
- (5) makes no changes to this subdivision;
- (6) require collection of information relating to motor vehicle stops in which a ticket, citation, or warning is issued and to arrests made as a result of those stops, including certain information; and
- (7) makes no changes to this subdivision.

(d) Requires the agency to also examine the feasibility of equipping each peace officer who regularly detains or stops motor vehicles with a body worn camera, as that term is defined by Section 1701.651 (Definitions), Occupations Code. Requires the policy

adopted by the agency under Subsection (b), if a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras, to include standards for reviewing video and audio documentation.

(h) Requires a law enforcement agency to review data collected under Subsection (b)(6) to identify any improvements the agency could make in its practices and policies regarding motor vehicle stops.

SECTION 5.03. 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, if so, whether the person detained signed an acknowledgement or made a recorded verbal statement that the person consented to the search; whether the officer issued a verbal or written warning or a ticket or citation as a result of the stop, rather than issued a written warning or a citation as a result of the stop; and whether the officer used physical force that resulted in bodily injury as that term is defined by Section 1.07 (Definitions), Penal Code, during the stop. Makes a nonsubstantive change.

(c) Provides that the chief administrator of a law enforcement agency, regardless of whether the administrator is elected, employed, or appointed, is responsible for auditing reports under Subsection (b) to ensure that the race or ethnicity of the person operating the motor vehicle is being reported.

SECTION 5.04. Amends Article 2.134(c), 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 to include certain information, including a comparative analysis of the information compiled under Article 2.133, 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. Makes nonsubstantive changes.

SECTION 5.05. 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 purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras. 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).

(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 purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras. Deletes existing text referencing Article 2.135(a)(1)(A).

(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 purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, to certify to DPS that the law enforcement agency needs funds or video and audio equipment for that purpose. Deletes existing text referencing Article 2.135(a)(1)(A).

(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 purpose of installing video and audio equipment in law enforcement motor vehicles and motorcycles or equipping peace officers with body worn cameras, to certify to DPS that the law enforcement agency has taken the necessary actions to use and is using video and audio equipment and body worn cameras for those purposes, rather than the agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1). Makes a conforming change.

SECTION 5.06. 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 the amount of \$1,000 to an amount not to exceed \$5,000 for each violation.

SECTION 5.07. Repealer: Article 2.135 (Partial Exemption for Agencies Using Video and Audio Equipment), Code of Criminal Procedure.

SECTION 5.08. 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 5.09. 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 5.10. 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 enable the guidelines to better withstand academic scrutiny and to make accessible online certain information.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date, except as otherwise provided by this Act: September 1, 2017.