

By: Flores

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain criminal conduct involving the smuggling of persons or the operation of a stash house; increasing criminal penalties.

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

SECTION 1. If H.B. No. 165, Acts of the 88th Legislature, Regular Session, 2023, becomes law, Section 3.03, Penal Code, as effective September 1, 2023, is amended by amending Subsection (a) and adding Subsections (d) and (e) to read as follows:

(a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused has been found guilty shall be pronounced. Except as otherwise provided by this section [~~Subsections (b) and (c)~~], the sentences shall run concurrently.

(d)(1) This subsection applies only to a single criminal action in which the accused is found guilty of:

(A) an offense under Section 20.05(a)(2) or an offense under Section 20.06 involving conduct constituting an offense under Section 20.05(a)(2); and

(B) an offense punishable under Section 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or 38.04(b-1) that arises out of the same criminal episode as the offense described by Paragraph (A).

1           (2) The sentence for an offense described by  
2 Subdivision (1)(A) may run consecutively with each sentence for an  
3 offense described by Subdivision (1)(B).

4           (3) If the accused is found guilty of more than one  
5 offense described by Subdivision (1)(A), the sentences for those  
6 offenses must run concurrently with each other.

7           (e) Except as otherwise provided by this subsection, if in a  
8 single criminal action the accused is found guilty of more than one  
9 offense arising out of the same criminal episode, the sentences may  
10 run consecutively if each sentence is for a conviction of an offense  
11 for which a plea agreement was reached in a case in which the  
12 accused was charged with an offense described by Subsection  
13 (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the  
14 accused is found guilty of more than one offense described by  
15 Subsection (d)(1)(A), the sentences for those offenses must run  
16 concurrently with each other.

17           SECTION 2. If H.B. No. 165, Acts of the 88th Legislature,  
18 Regular Session, 2023, does not become law, Section 3.03, Penal  
19 Code, is amended by amending Subsection (a) and adding Subsections  
20 (c) and (d) to read as follows:

21           (a) When the accused is found guilty of more than one  
22 offense arising out of the same criminal episode prosecuted in a  
23 single criminal action, a sentence for each offense for which the  
24 accused [~~he~~] has been found guilty shall be pronounced. Except as  
25 otherwise provided by this section [~~Subsection (b)~~], the sentences  
26 shall run concurrently.

27           (c)(1) This subsection applies only to a single criminal

1 action in which the accused is found guilty of:

2 (A) an offense under Section 20.05(a)(2) or an  
3 offense under Section 20.06 involving conduct constituting an  
4 offense under Section 20.05(a)(2); and

5 (B) an offense punishable under Section  
6 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or  
7 38.04(b-1) that arises out of the same criminal episode as the  
8 offense described by Paragraph (A).

9 (2) The sentence for an offense described by  
10 Subdivision (1)(A) may run consecutively with each sentence for an  
11 offense described by Subdivision (1)(B).

12 (3) If the accused is found guilty of more than one  
13 offense described by Subdivision (1)(A), the sentences for those  
14 offenses must run concurrently with each other.

15 (d) Except as otherwise provided by this subsection, if in a  
16 single criminal action the accused is found guilty of more than one  
17 offense arising out of the same criminal episode, the sentences may  
18 run consecutively if each sentence is for a conviction of an offense  
19 for which a plea agreement was reached in a case in which the  
20 accused was charged with an offense described by Subsection  
21 (c)(1)(A) and an offense described by Subsection (c)(1)(B). If the  
22 accused is found guilty of more than one offense described by  
23 Subsection (c)(1)(A), the sentences for those offenses must run  
24 concurrently with each other.

25 SECTION 3. Section 12.50, Penal Code, is amended by  
26 amending Subsections (a), (b), and (c) and adding Subsection (d) to  
27 read as follows:

1 (a) Subject to Subsections [~~Subsection~~] (c) and (d), the  
2 punishment for an offense described by Subsection (b) is increased  
3 to the punishment prescribed for the next higher category of  
4 offense if it is shown on the trial of the offense that the offense  
5 was committed in an area that was, at the time of the offense:

6 (1) subject to a declaration of a state of disaster  
7 made by:

8 (A) the president of the United States under the  
9 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42  
10 U.S.C. Section 5121 et seq.);

11 (B) the governor under Section [418.014](#),  
12 Government Code; or

13 (C) the presiding officer of the governing body  
14 of a political subdivision under Section [418.108](#), Government Code;  
15 or

16 (2) subject to an emergency evacuation order.

17 (b) The increase in punishment authorized by this section  
18 applies only to an offense under:

19 (1) Section [20.05](#);

20 (2) Section [20.06](#);

21 (3) Section [20.07](#);

22 (4) Section [22.01](#);

23 (5) [~~(2)~~] Section [28.02](#);

24 (6) [~~(3)~~] Section [29.02](#);

25 (7) [~~(4)~~] Section [30.02](#);

26 (8) [~~(5)~~] Section [30.03](#);

27 (9) [~~(6)~~] Section [30.04](#);

1           (10) [~~(7)~~] Section 30.05; and

2           (11) [~~(8)~~] Section 31.03.

3           (c) If an offense listed under Subsection (b) [~~(b)(1), (5),~~  
4 ~~(6), (7), or (8)~~] is punishable as a Class A misdemeanor, the  
5 minimum term of confinement for the offense is increased to 180  
6 days. Except as provided by Subsection (d), if [~~If~~] an offense  
7 listed under Subsection (b) [~~(b)(2), (4), or (8)~~] is punishable as a  
8 felony of the first degree, the punishment for that offense may not  
9 be increased under this section.

10           (d) Except as otherwise provided by this subsection, the  
11 minimum term of imprisonment for an offense listed under Subsection  
12 (b)(1), (2), or (3) for which punishment is increased under this  
13 section is 10 years. If an offense listed under Subsection (b)(1)  
14 or (2) is punishable as a felony of the first degree, the minimum  
15 term of imprisonment is increased to 15 years unless another  
16 provision of law applicable to the offense provides for a minimum  
17 term of imprisonment of 15 years or more.

18           SECTION 4. Section 20.05, Penal Code, is amended by  
19 amending Subsection (b) and adding Subsection (b-1) to read as  
20 follows:

21           (b) Subject to Subsection (b-1), an [~~An~~] offense under this  
22 section is a felony of the third degree with a term of imprisonment  
23 of 10 years, except that the offense is:

24                   (1) a felony of the second degree with a minimum term  
25 of imprisonment of 10 years if:

26                           (A) the actor commits the offense in a manner  
27 that creates a substantial likelihood that the smuggled individual

1 will suffer serious bodily injury or death;

2 (B) the smuggled individual is a child younger  
3 than 18 years of age at the time of the offense;

4 (C) the offense was committed with the intent to  
5 obtain a pecuniary benefit;

6 (D) during the commission of the offense the  
7 actor, another party to the offense, or an individual assisted,  
8 guided, or directed by the actor knowingly possessed a firearm; or

9 (E) the actor commits the offense under  
10 Subsection (a)(1)(B); or

11 (2) a felony of the first degree with a minimum term of  
12 imprisonment of 10 years if:

13 (A) it is shown on the trial of the offense that,  
14 as a direct result of the commission of the offense, the smuggled  
15 individual became a victim of sexual assault, as defined by Section  
16 22.011, or aggravated sexual assault, as defined by Section 22.021;  
17 or

18 (B) the smuggled individual suffered serious  
19 bodily injury or death.

20 (b-1) If at the punishment stage of the trial or at the time  
21 of entering a plea agreement for an offense under this section  
22 punishable as a felony of the third degree, the attorney  
23 representing the state in the prosecution of the offense certifies  
24 to the court in writing that the actor has provided significant  
25 cooperation to the state or law enforcement, and describes the  
26 manner of cooperation, the minimum term of imprisonment is five  
27 years. The certification is confidential and shall be sealed by the

1 court, except that the certification may be accessed by the office  
2 of the attorney representing the state, the attorney representing  
3 the defendant, and the court. For purposes of this subsection,  
4 "significant cooperation" includes:

5 (1) testifying in a trial on behalf of the state  
6 against other parties to the offense;

7 (2) providing relevant information regarding the case  
8 and other parties to the offense;

9 (3) providing information that furthers the  
10 investigation of the charged offense and any other parties  
11 involved; or

12 (4) providing information that aids law enforcement.

13 SECTION 5. Sections 20.06(e) and (f), Penal Code, are  
14 amended to read as follows:

15 (e) Except as provided by Subsections (f) and (g), an  
16 offense under this section is a felony of the second degree with a  
17 minimum term of imprisonment of 10 years.

18 (f) An offense under this section is a felony of the first  
19 degree with a minimum term of imprisonment of 10 years if:

20 (1) the conduct constituting an offense under Section  
21 20.05 is conducted in a manner that creates a substantial  
22 likelihood that the smuggled individual will suffer serious bodily  
23 injury or death; or

24 (2) the smuggled individual is a child younger than 18  
25 years of age at the time of the offense.

26 SECTION 6. Section 20.07(b), Penal Code, is amended to read  
27 as follows:

1 (b) An offense under this section is a felony of the third  
2 degree with a minimum term of imprisonment of five years, except  
3 that the offense is a felony of the second degree with a minimum  
4 term of imprisonment of five years if:

5 (1) the offense is committed under Subsection (a)(1)  
6 and the property that is the subject of the offense is used to  
7 commit or facilitate the commission of an offense under Section  
8 20.06, 20A.03, or 43.05; or

9 (2) it is shown on the trial of the offense that as a  
10 direct result of the commission of the offense:

11 (A) an individual became a victim of sexual  
12 assault, as defined by Section 22.011, or aggravated sexual  
13 assault, as defined by Section 22.021; or

14 (B) an individual suffered serious bodily injury  
15 or death [~~Class A misdemeanor~~].

16 SECTION 7. Section 22.01, Penal Code, is amended by adding  
17 Subsection (b-4) to read as follows:

18 (b-4) Notwithstanding Subsection (b), an offense under  
19 Subsection (a)(1) is a felony of the third degree if it is shown on  
20 the trial of the offense that the actor committed the offense in the  
21 course of committing an offense under Section 20.05(a)(2).

22 SECTION 8. Chapter 28, Penal Code, is amended by adding  
23 Section 28.10 to read as follows:

24 Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR  
25 STATE JAIL FELONIES. The punishment for an offense under this  
26 chapter that is punishable as a misdemeanor or a state jail felony  
27 is increased to the punishment for a felony of the third degree if



1 it is shown on the trial of the offense that the actor committed the  
2 offense in the course of committing an offense under Section  
3 20.05(a)(2).

4 SECTION 9. Section 30.02, Penal Code, is amended by  
5 amending Subsection (c) and adding Subsection (c-2) to read as  
6 follows:

7 (c) Except as provided in Subsection (c-1), (c-2), or (d),  
8 an offense under this section is a:

9 (1) state jail felony if committed in a building other  
10 than a habitation; or

11 (2) felony of the second degree if committed in a  
12 habitation.

13 (c-2) An offense under this section is a felony of the third  
14 degree if:

15 (1) the premises are a building other than a  
16 habitation; and

17 (2) it is shown on the trial of the offense that the  
18 actor committed the offense in the course of committing an offense  
19 under Section 20.05(a)(2).

20 SECTION 10. Section 30.04(d), Penal Code, is amended to  
21 read as follows:

22 (d) An offense under this section is a Class A misdemeanor,  
23 except that:

24 (1) the offense is a Class A misdemeanor with a minimum  
25 term of confinement of six months if it is shown on the trial of the  
26 offense that the defendant has been previously convicted of an  
27 offense under this section;

1 (2) the offense is a state jail felony if:

2 (A) it is shown on the trial of the offense that  
3 the defendant has been previously convicted two or more times of an  
4 offense under this section; or

5 (B) the vehicle or part of the vehicle broken  
6 into or entered is a rail car; and

7 (3) the offense is a felony of the third degree if:

8 (A) the vehicle broken into or entered is owned  
9 or operated by a wholesale distributor of prescription drugs[+] and

10 [~~(B)~~] the actor breaks into or enters that  
11 vehicle with the intent to commit theft of a controlled substance;  
12 or

13 (B) it is shown on the trial of the offense that  
14 the actor committed the offense in the course of committing an  
15 offense under Section 20.05(a)(2).

16 SECTION 11. Section 30.05(d), Penal Code, is amended to  
17 read as follows:

18 (d) Subject to Subsection (d-3), an offense under this  
19 section is:

20 (1) a Class B misdemeanor, except as provided by  
21 Subdivisions (2), ~~[and]~~ (3), and (4);

22 (2) a Class C misdemeanor, except as provided by  
23 Subdivisions [~~Subdivision~~] (3) and (4), if the offense is  
24 committed:

25 (A) on agricultural land and within 100 feet of  
26 the boundary of the land; or

27 (B) on residential land and within 100 feet of a

1 protected freshwater area; ~~and~~

2 (3) a Class A misdemeanor, except as provided by  
3 Subdivision (4), if:

4 (A) the offense is committed:

5 (i) in a habitation or a shelter center;

6 (ii) on a Superfund site; or

7 (iii) on or in a critical infrastructure  
8 facility;

9 (B) the offense is committed on or in property of  
10 an institution of higher education and it is shown on the trial of  
11 the offense that the person has previously been convicted of:

12 (i) an offense under this section relating  
13 to entering or remaining on or in property of an institution of  
14 higher education; or

15 (ii) an offense under Section 51.204(b)(1),  
16 Education Code, relating to trespassing on the grounds of an  
17 institution of higher education;

18 (C) the person carries a deadly weapon during the  
19 commission of the offense; or

20 (D) the offense is committed on the property of  
21 or within a general residential operation operating as a  
22 residential treatment center; and

23 (4) a felony of the third degree if it is shown on the  
24 trial of the offense that the defendant committed the offense in the  
25 course of committing an offense under Section 20.05(a)(2).

26 SECTION 12. Section 38.04, Penal Code, is amended by adding  
27 Subsection (b-1) to read as follows:

1           (b-1) Notwithstanding Subsection (b), an offense under this  
2 section is a felony of the third degree if it is shown on the trial  
3 of the offense that the actor committed the offense in the course of  
4 committing an offense under Section 20.05(a)(2).

5           SECTION 13. The changes in law made by this Act apply only  
6 to an offense committed on or after the effective date of this Act.  
7 An offense committed before the effective date of this Act is  
8 governed by the law in effect on the date the offense was committed,  
9 and the former law is continued in effect for that purpose. For  
10 purposes of this section, an offense was committed before the  
11 effective date of this Act if any element of the offense was  
12 committed before that date.

13           SECTION 14. This Act takes effect October 1, 2023.