

By: Guillen

H.B. No. 5

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for certain criminal conduct involving
3 the smuggling of persons or the operation of a stash house;
4 increasing criminal penalties.

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

6 SECTION 1. Section 3.03, Penal Code, is amended by amending
7 Subsection (a) and adding Subsections (d) and (e) to read as
8 follows:

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

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

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

20 (B) an offense punishable under Section
21 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
22 38.04(b-1) that arises out of the same criminal episode as the
23 offense described by Paragraph (A).

24 (2) The sentence for an offense described by

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

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

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

16 SECTION 2. Section 12.50, Penal Code, is amended by
17 amending Subsections (a), (b), and (c) and adding Subsection (d) to
18 read as follows:

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

24 (1) subject to a declaration of a state of disaster
25 made by:

26 (A) the president of the United States under the
27 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42

1 U.S.C. Section 5121 et seq.);

2 (B) the governor under Section 418.014,
3 Government Code; or

4 (C) the presiding officer of the governing body
5 of a political subdivision under Section 418.108, Government Code;
6 or

7 (2) subject to an emergency evacuation order.

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

10 (1) Section 20.05;

11 (2) Section 20.06;

12 (3) Section 20.07;

13 (4) Section 22.01;

14 (5) [~~(2)~~] Section 28.02;

15 (6) [~~(3)~~] Section 29.02;

16 (7) [~~(4)~~] Section 30.02;

17 (8) [~~(5)~~] Section 30.03;

18 (9) [~~(6)~~] Section 30.04;

19 (10) [~~(7)~~] Section 30.05; and

20 (11) [~~(8)~~] Section 31.03.

21 (c) If an offense listed under Subsection (b) [~~(b)(1), (5),~~
22 ~~(6), (7), or (8)]~~ is punishable as a Class A misdemeanor, the
23 minimum term of confinement for the offense is increased to 180
24 days. Except as provided by Subsection (d), if [~~if~~] an offense
25 listed under Subsection (b) [~~(b)(2), (4), or (8)]~~ is punishable as a
26 felony of the first degree, the punishment for that offense may not
27 be increased under this section.

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

9 SECTION 3. Section 20.05, Penal Code, is amended by
10 amending Subsection (b) and adding Subsections (b-1) and (b-2) to
11 read as follows:

12 (b) Subject to Subsections (b-1) and (b-2), an ~~An~~ offense
13 under this section is a felony of the third degree with a term of
14 imprisonment of 10 years, except that the offense is:

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

17 (A) the actor commits the offense in a manner
18 that creates a substantial likelihood that the smuggled individual
19 will suffer serious bodily injury or death;

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

22 (C) the offense was committed with the intent to
23 obtain a pecuniary benefit;

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

27 (E) the actor commits the offense under

1 Subsection (a)(1)(B); or

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

4 (A) it is shown on the trial of the offense that,
5 as a direct result of the commission of the offense, the smuggled
6 individual became a victim of sexual assault, as defined by Section
7 22.011, or aggravated sexual assault, as defined by Section 22.021;
8 or

9 (B) the smuggled individual suffered serious
10 bodily injury or death.

11 (b-1) If at the punishment stage of the trial or at the time
12 of entering a plea agreement for an offense under this section
13 punishable as a felony of the third degree, the attorney
14 representing the state in the prosecution of the offense certifies
15 to the court in writing that the actor has provided significant
16 cooperation to the state or law enforcement, and describes the
17 manner of cooperation, the minimum term of imprisonment is five
18 years. The certification is confidential and shall be sealed by the
19 court, except that the certification may be accessed by the office
20 of the attorney representing the state, the attorney representing
21 the defendant, and the court. For purposes of this subsection,
22 "significant cooperation" includes:

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

25 (2) providing relevant information regarding the case
26 and other parties to the offense;

27 (3) providing information that furthers the

1 investigation of the charged offense and any other parties
2 involved; or

3 (4) providing information that aids law enforcement.

4 (b-2) At the punishment stage of a trial of an offense under
5 this section, other than an offense punishable under Subsection
6 (b)(1)(A), (C), (D), or (E) or (b)(2), the actor may raise the issue
7 as to whether the actor is related to the smuggled individual in the
8 third degree of consanguinity or, at the time of the offense, in the
9 third degree of affinity. If the actor proves the issue in the
10 affirmative by a preponderance of the evidence, the offense is a
11 felony of the third degree with a minimum term of imprisonment of
12 five years.

13 SECTION 4. 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 5. 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 6. 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 7. 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 8. 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 9. Section 30.04(d), Penal Code, is amended to read
21 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 10. 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 11. 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 12. 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 13. This Act takes effect December 1, 2023, if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for effect on that
17 date, this Act takes effect on the 91st day after the last day of the
18 legislative session.