

1-1 By: Flores, Hall, King S.B. No. 4
1-2 (In the Senate - Filed October 9, 2023; October 9, 2023, read
1-3 first time and referred to Committee on Border Security;
1-4 October 11, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; October 11, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Birdwell</u>	X		
1-10	<u>Flores</u>	X		
1-11	<u>Blanco</u>	X		
1-12	<u>Hinojosa</u>	X		
1-13	<u>King</u>	X		

1-14 COMMITTEE SUBSTITUTE FOR S.B. No. 4 By: Flores

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the punishment for certain criminal conduct involving
1-18 the smuggling of persons or the operation of a stash house;
1-19 increasing criminal penalties.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 3.03, Penal Code, is amended by amending
1-22 Subsection (a) and adding Subsections (d) and (e) to read as
1-23 follows:

1-24 (a) When the accused is found guilty of more than one
1-25 offense arising out of the same criminal episode prosecuted in a
1-26 single criminal action, a sentence for each offense for which the
1-27 accused has been found guilty shall be pronounced. Except as
1-28 otherwise provided by this section [~~Subsections (b) and (c)~~], the
1-29 sentences shall run concurrently.

1-30 (d)(1) This subsection applies only to a single criminal
1-31 action in which the accused is found guilty of:

1-32 (A) an offense under Section 20.05(a)(2) or an
1-33 offense under Section 20.06 involving conduct constituting an
1-34 offense under Section 20.05(a)(2); and

1-35 (B) an offense punishable under Section
1-36 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
1-37 38.04(b-1) that arises out of the same criminal episode as the
1-38 offense described by Paragraph (A).

1-39 (2) The sentence for an offense described by
1-40 Subdivision (1)(A) may run consecutively with each sentence for an
1-41 offense described by Subdivision (1)(B).

1-42 (3) If the accused is found guilty of more than one
1-43 offense described by Subdivision (1)(A), the sentences for those
1-44 offenses must run concurrently with each other.

1-45 (e) Except as otherwise provided by this subsection, if in a
1-46 single criminal action the accused is found guilty of more than one
1-47 offense arising out of the same criminal episode, the sentences may
1-48 run consecutively if each sentence is for a conviction of an offense
1-49 for which a plea agreement was reached in a case in which the
1-50 accused was charged with an offense described by Subsection
1-51 (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the
1-52 accused is found guilty of more than one offense described by
1-53 Subsection (d)(1)(A), the sentences for those offenses must run
1-54 concurrently with each other.

1-55 SECTION 2. Section 12.50, Penal Code, is amended by
1-56 amending Subsections (a), (b), and (c) and adding Subsection (d) to
1-57 read as follows:

1-58 (a) Subject to Subsections [~~Subsection~~] (c) and (d), the
1-59 punishment for an offense described by Subsection (b) is increased
1-60 to the punishment prescribed for the next higher category of
1-61 offense if it is shown on the trial of the offense that the offense

2-1 was committed in an area that was, at the time of the offense:
 2-2 (1) subject to a declaration of a state of disaster
 2-3 made by:
 2-4 (A) the president of the United States under the
 2-5 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42
 2-6 U.S.C. Section 5121 et seq.);
 2-7 (B) the governor under Section 418.014,
 2-8 Government Code; or
 2-9 (C) the presiding officer of the governing body
 2-10 of a political subdivision under Section 418.108, Government Code;
 2-11 or
 2-12 (2) subject to an emergency evacuation order.
 2-13 (b) The increase in punishment authorized by this section
 2-14 applies only to an offense under:
 2-15 (1) Section 20.05;
 2-16 (2) Section 20.06;
 2-17 (3) Section 20.07;
 2-18 (4) Section 22.01;
 2-19 (5) [~~2~~] Section 28.02;
 2-20 (6) [~~3~~] Section 29.02;
 2-21 (7) [~~4~~] Section 30.02;
 2-22 (8) [~~5~~] Section 30.03;
 2-23 (9) [~~6~~] Section 30.04;
 2-24 (10) [~~7~~] Section 30.05; and
 2-25 (11) [~~8~~] Section 31.03.
 2-26 (c) If an offense listed under Subsection (b) [~~(b)(1), (5),~~
 2-27 ~~(6), (7), or (8)]~~ is punishable as a Class A misdemeanor, the
 2-28 minimum term of confinement for the offense is increased to 180
 2-29 days. Except as provided by Subsection (d), if [~~if~~] an offense
 2-30 listed under Subsection (b) [~~(b)(2), (4), or (8)]~~ is punishable as a
 2-31 felony of the first degree, the punishment for that offense may not
 2-32 be increased under this section.
 2-33 (d) Except as otherwise provided by this subsection, the
 2-34 minimum term of imprisonment for an offense listed under Subsection
 2-35 (b)(1), (2), or (3) for which punishment is increased under this
 2-36 section is 10 years. If an offense listed under Subsection (b)(1)
 2-37 or (2) is punishable as a felony of the first degree, the minimum
 2-38 term of imprisonment is increased to 15 years unless another
 2-39 provision of law applicable to the offense provides for a minimum
 2-40 term of imprisonment of 15 years or more.
 2-41 SECTION 3. Section 20.01, Penal Code, is amended by adding
 2-42 Subdivision (9) to read as follows:
 2-43 (9) "Cultural resource site or area," "natural area,"
 2-44 and "park" have the meanings assigned by Section 24.001, Parks and
 2-45 Wildlife Code.
 2-46 SECTION 4. Section 20.05, Penal Code, is amended by
 2-47 amending Subsections (a) and (b) and adding Subsections (b-1) and
 2-48 (b-2) to read as follows:
 2-49 (a) A person commits an offense if the person knowingly:
 2-50 (1) uses a motor vehicle, aircraft, watercraft, or
 2-51 other means of conveyance to transport an individual with the
 2-52 intent to:
 2-53 (A) conceal the individual from a peace officer
 2-54 or special investigator; or
 2-55 (B) flee from a person the actor knows is a peace
 2-56 officer or special investigator attempting to lawfully arrest or
 2-57 detain the actor;
 2-58 (2) encourages or induces a person to enter or remain
 2-59 in this country in violation of federal law by concealing,
 2-60 harboring, or shielding that person from detection; or
 2-61 (3) assists, guides, or directs two or more
 2-62 individuals to enter or remain on a cultural resource site or area,
 2-63 natural area, park, or agricultural land without the effective
 2-64 consent of the owner.
 2-65 (b) Subject to Subsections (b-1) and (b-2), an [~~An~~] offense
 2-66 under this section is a felony of the third degree with a term of
 2-67 imprisonment of 10 years, except that the offense is:
 2-68 (1) a felony of the second degree with a minimum term
 2-69 of imprisonment of 10 years if:

3-1 (A) the actor commits the offense in a manner
3-2 that creates a substantial likelihood that the smuggled individual
3-3 will suffer serious bodily injury or death;

3-4 (B) the smuggled individual is a child younger
3-5 than 18 years of age at the time of the offense;

3-6 (C) the offense was committed with the intent to
3-7 obtain a pecuniary benefit;

3-8 (D) during the commission of the offense the
3-9 actor, another party to the offense, or an individual assisted,
3-10 guided, or directed by the actor knowingly possessed a firearm; or

3-11 (E) the actor commits the offense under
3-12 Subsection (a)(1)(B); or

3-13 (2) a felony of the first degree with a minimum term of
3-14 imprisonment of 10 years if:

3-15 (A) it is shown on the trial of the offense that,
3-16 as a direct result of the commission of the offense, the smuggled
3-17 individual became a victim of sexual assault, as defined by Section
3-18 22.011, or aggravated sexual assault, as defined by Section 22.021;
3-19 or

3-20 (B) the smuggled individual suffered serious
3-21 bodily injury or death.

3-22 (b-1) If at the punishment stage of the trial or at the time
3-23 of entering a plea agreement for an offense under this section
3-24 punishable as a felony of the third degree, the attorney
3-25 representing the state in the prosecution of the offense certifies
3-26 to the court in writing that the actor has provided significant
3-27 cooperation to the state or law enforcement, and describes the
3-28 manner of cooperation, the minimum term of imprisonment is five
3-29 years. The certification is confidential and shall be sealed by the
3-30 court, except that the certification may be accessed by the office
3-31 of the attorney representing the state, the attorney representing
3-32 the defendant, and the court. For purposes of this subsection,
3-33 "significant cooperation" includes:

3-34 (1) testifying in a trial on behalf of the state
3-35 against other parties to the offense;

3-36 (2) providing relevant information regarding the case
3-37 and other parties to the offense;

3-38 (3) providing information that furthers the
3-39 investigation of the charged offense and any other parties
3-40 involved; or

3-41 (4) providing information that aids law enforcement.

3-42 (b-2) At the punishment stage of a trial of an offense under
3-43 this section, other than an offense punishable under Subsection
3-44 (b)(1)(A), (C), (D), or (E) or (b)(2), the actor may raise the issue
3-45 as to whether the actor is related to the smuggled individual in the
3-46 third degree of consanguinity or, at the time of the offense, in the
3-47 third degree of affinity. If the actor proves the issue in the
3-48 affirmative by a preponderance of the evidence, the offense is a
3-49 felony of the third degree with a minimum term of imprisonment of
3-50 five years.

3-51 SECTION 5. Sections 20.06(e) and (f), Penal Code, are
3-52 amended to read as follows:

3-53 (e) Except as provided by Subsections (f) and (g), an
3-54 offense under this section is a felony of the second degree with a
3-55 minimum term of imprisonment of 10 years.

3-56 (f) An offense under this section is a felony of the first
3-57 degree with a minimum term of imprisonment of 10 years if:

3-58 (1) the conduct constituting an offense under Section
3-59 20.05 is conducted in a manner that creates a substantial
3-60 likelihood that the smuggled individual will suffer serious bodily
3-61 injury or death; or

3-62 (2) the smuggled individual is a child younger than 18
3-63 years of age at the time of the offense.

3-64 SECTION 6. Section 20.07(b), Penal Code, is amended to read
3-65 as follows:

3-66 (b) An offense under this section is a felony of the third
3-67 degree with a minimum term of imprisonment of five years, except
3-68 that the offense is a felony of the second degree with a minimum
3-69 term of imprisonment of five years if:

4-1 (1) the offense is committed under Subsection (a)(1)
 4-2 and the property that is the subject of the offense is used to
 4-3 commit or facilitate the commission of an offense under Section
 4-4 20.06, 20A.03, or 43.05; or

4-5 (2) it is shown on the trial of the offense that as a
 4-6 direct result of the commission of the offense:

4-7 (A) an individual became a victim of sexual
 4-8 assault, as defined by Section 22.011, or aggravated sexual
 4-9 assault, as defined by Section 22.021; or

4-10 (B) an individual suffered serious bodily injury
 4-11 or death [~~Class A misdemeanor~~].

4-12 SECTION 7. Section 22.01, Penal Code, is amended by adding
 4-13 Subsection (b-4) to read as follows:

4-14 (b-4) Notwithstanding Subsection (b), an offense under
 4-15 Subsection (a)(1) is a felony of the third degree if it is shown on
 4-16 the trial of the offense that the actor committed the offense in the
 4-17 course of committing an offense under Section 20.05(a)(2).

4-18 SECTION 8. Chapter 28, Penal Code, is amended by adding
 4-19 Section 28.10 to read as follows:

4-20 Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR
 4-21 STATE JAIL FELONIES. The punishment for an offense under this
 4-22 chapter that is punishable as a misdemeanor or a state jail felony
 4-23 is increased to the punishment for a felony of the third degree if
 4-24 it is shown on the trial of the offense that the actor committed the
 4-25 offense in the course of committing an offense under Section
 4-26 20.05(a)(2).

4-27 SECTION 9. Section 30.02, Penal Code, is amended by
 4-28 amending Subsection (c) and adding Subsection (c-2) to read as
 4-29 follows:

4-30 (c) Except as provided in Subsection (c-1), (c-2), or (d),
 4-31 an offense under this section is a:

4-32 (1) state jail felony if committed in a building other
 4-33 than a habitation; or

4-34 (2) felony of the second degree if committed in a
 4-35 habitation.

4-36 (c-2) An offense under this section is a felony of the third
 4-37 degree if:

4-38 (1) the premises are a building other than a
 4-39 habitation; and

4-40 (2) it is shown on the trial of the offense that the
 4-41 actor committed the offense in the course of committing an offense
 4-42 under Section 20.05(a)(2).

4-43 SECTION 10. Section 30.04(d), Penal Code, is amended to
 4-44 read as follows:

4-45 (d) An offense under this section is a Class A misdemeanor,
 4-46 except that:

4-47 (1) the offense is a Class A misdemeanor with a minimum
 4-48 term of confinement of six months if it is shown on the trial of the
 4-49 offense that the defendant has been previously convicted of an
 4-50 offense under this section;

4-51 (2) the offense is a state jail felony if:

4-52 (A) it is shown on the trial of the offense that
 4-53 the defendant has been previously convicted two or more times of an
 4-54 offense under this section; or

4-55 (B) the vehicle or part of the vehicle broken
 4-56 into or entered is a rail car; and

4-57 (3) the offense is a felony of the third degree if:

4-58 (A) the vehicle broken into or entered is owned
 4-59 or operated by a wholesale distributor of prescription drugs[+] and
 4-60 [~~(B)~~] the actor breaks into or enters that
 4-61 vehicle with the intent to commit theft of a controlled substance;

4-62 or

4-63 (B) it is shown on the trial of the offense that
 4-64 the actor committed the offense in the course of committing an
 4-65 offense under Section 20.05(a)(2).

4-66 SECTION 11. Section 30.05(d), Penal Code, is amended to
 4-67 read as follows:

4-68 (d) Subject to Subsection (d-3), an offense under this
 4-69 section is:

5-1 (1) a Class B misdemeanor, except as provided by
5-2 Subdivisions (2), ~~and~~ (3), and (4);

5-3 (2) a Class C misdemeanor, except as provided by
5-4 Subdivisions ~~[Subdivision]~~ (3) and (4), if the offense is
5-5 committed:

5-6 (A) on agricultural land and within 100 feet of
5-7 the boundary of the land; or

5-8 (B) on residential land and within 100 feet of a
5-9 protected freshwater area; ~~and~~

5-10 (3) a Class A misdemeanor, except as provided by
5-11 Subdivision (4), if:

5-12 (A) the offense is committed:
5-13 (i) in a habitation or a shelter center;
5-14 (ii) on a Superfund site; or
5-15 (iii) on or in a critical infrastructure
5-16 facility;

5-17 (B) the offense is committed on or in property of
5-18 an institution of higher education and it is shown on the trial of
5-19 the offense that the person has previously been convicted of:

5-20 (i) an offense under this section relating
5-21 to entering or remaining on or in property of an institution of
5-22 higher education; or

5-23 (ii) an offense under Section 51.204(b)(1),
5-24 Education Code, relating to trespassing on the grounds of an
5-25 institution of higher education;

5-26 (C) the person carries a deadly weapon during the
5-27 commission of the offense; or

5-28 (D) the offense is committed on the property of
5-29 or within a general residential operation operating as a
5-30 residential treatment center; and

5-31 (4) a felony of the third degree if it is shown on the
5-32 trial of the offense that the defendant committed the offense in the
5-33 course of committing an offense under Section 20.05(a)(2).

5-34 SECTION 12. Section 38.04, Penal Code, is amended by adding
5-35 Subsection (b-1) to read as follows:

5-36 (b-1) Notwithstanding Subsection (b), an offense under this
5-37 section is a felony of the third degree if it is shown on the trial
5-38 of the offense that the actor committed the offense in the course of
5-39 committing an offense under Section 20.05(a)(2).

5-40 SECTION 13. The changes in law made by this Act apply only
5-41 to an offense committed on or after the effective date of this Act.
5-42 An offense committed before the effective date of this Act is
5-43 governed by the law in effect on the date the offense was committed,
5-44 and the former law is continued in effect for that purpose. For
5-45 purposes of this section, an offense was committed before the
5-46 effective date of this Act if any element of the offense was
5-47 committed before that date.

5-48 SECTION 14. This Act takes effect December 1, 2023, if it
5-49 receives a vote of two-thirds of all the members elected to each
5-50 house, as provided by Section 39, Article III, Texas Constitution.
5-51 If this Act does not receive the vote necessary for effect on that
5-52 date, this Act takes effect on the 91st day after the last day of the
5-53 legislative session.

5-54 * * * * *