

## **BILL ANALYSIS**

Senate Research Center  
82R25488 E

C.S.S.B. 146  
By: Hinojosa  
Criminal Justice  
5/2/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In South Texas, along with a growing portion of the rest of the state, "coyotes" frequently traffic both illegal and legal residents in Texas in an unsafe manner for pecuniary benefit.

It is difficult for prosecutors to convict people under Chapter 20A (Trafficking of Persons), Penal Code, because they have to prove under Section 20A.02(a) that the person knowingly traffics another person with the intent or knowledge that the trafficked person will engage in forced labor or services, or benefits from participating in a venture that involves an activity described in Subdivision (1), including by receiving labor or services that person knows are forced labor or services.

Fewer than 50 of the roughly 160,000 inmates in the Texas Department of Criminal Justice System have been convicted of an offense, as either a primary or secondary charge, under Chapter 20A, Penal Code. Out of this subgroup of roughly 50, only four persons have been convicted of trafficking.

C.S.S.B. 146 amends current law relating to the offense of smuggling of persons and unlawful transport of an individual, and provides penalties.

### **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 the heading to Chapter 20, Penal Code, to read as follows:

#### CHAPTER 20. KIDNAPPING, UNLAWFUL RESTRAINT, AND SMUGGLING OF PERSONS

SECTION 2. Amends Section 20.05, Penal Code, as follows:

Sec. 20.05. New heading: SMUGGLING OF PERSONS. (a) Provides that a person commits an offense if the person intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to conceal the individual from a peace officer or special investigator and flees from a person he knows is a peace officer or special investigator attempting to lawfully arrest or detain him, rather than provides that a person commits an offense if the person for pecuniary benefit transports an individual in a manner that is designed to conceal the individual from local, state, or federal law enforcement authorities, and creates a substantial likelihood that the individual will suffer serious bodily injury or death.

(b) Provides that, except as provided by Subsection (c), an offense under this section is a state jail felony.

(c) Provides that an offense under this section is a felony of the third degree if the actor commits the offense for pecuniary benefit, or in a manner that creates a

substantial likelihood that the transported individual will suffer serious bodily injury or death.

(d) Provides that it is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the third degree of consanguinity or, at the time of the offense, within the third degree of affinity.

(e) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another section of this code, to be prosecuted under either section.

SECTION 3. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

(a) Provides that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B (Obscenity), Chapter 43 (Public Indecency), depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32 (Fraud);

(9) any offense under Chapter 36 (Bribery and Corrupt Influence);

(10) any offense under Chapter 34 (Money Laundering) or 35 (Insurance Fraud);

(11) any offense under Section 37.11(a) (providing that a person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts, or knowingly purports to exercise any function of a public servant or of a public office, including that of a judge and court, and the position or office through which he purports to exercise a function of a public servant or public office has no lawful existence under the constitution or laws of this state or of the United States);

- (12) any offense under Chapter 20A (Trafficking of Persons);
- (13) any offense under Section 37.10 (Tampering With Governmental Record);
- (14) any offense under Section 38.06 (Escape), 38.07 (Permitting or Facilitating Escape), 38.09 (Implements for Escape), or 38.11 (Prohibited Substances and Items in Correctional Facility);
- (15) any offense under Section 42.10 (Dog Fighting);
- (16) any offense under Section 46.06(a)(1) (providing that a person commits an offense if he sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act) or 46.14 (Firearm Smuggling); or
- (17) any offense under Section 20.05 (Unlawful Transport).

Makes nonsubstantive changes.

SECTION 4. Amends Article 13.12, Code of Criminal Procedure, as follows:

Art. 13.12. New heading: FALSE IMPRISONMENT, KIDNAPPING, AND SMUGGLING OF PERSONS. Provides that venue for false imprisonment, kidnapping, and smuggling of persons is in either the county in which the offense was committed, or in any county through, into, or out of which the person falsely imprisoned, kidnapped, or transported may have been taken. Makes nonsubstantive changes.

SECTION 5. Reenacts Article 59.01(2), Code of Criminal Procedure, as amended by Chapter 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, and amends it to redefine "contraband."

SECTION 6. Makes application of Sections 20.05 and 71.02, Penal Code, as amended by this Act, prospective.

SECTION 7. Makes application of Article 59.01(2), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 8. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 9. Effective date: September 1, 2011.