

AN ACT

relating to the prosecution and punishment of unlawful transport of a person.

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

SECTION 1. The heading to Chapter 20, Penal Code, is amended to read as follows:

CHAPTER 20. KIDNAPPING, ~~[AND]~~ UNLAWFUL RESTRAINT, AND SMUGGLING OF PERSONS

SECTION 2. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. SMUGGLING OF PERSONS ~~[UNLAWFUL TRANSPORT]~~.

(a) A person commits an offense if the person intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:

(1) conceal the individual from a peace officer or special investigator; or

(2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor ~~[for pecuniary benefit transports an individual in a manner that:~~

~~(1) is designed to conceal the individual from local, state, or federal law enforcement authorities; and~~

~~(2) creates a substantial likelihood that the individual will suffer serious bodily injury or death].~~

1           (b) Except as provided by Subsection (c), an [~~An~~] offense  
2 under this section is a state jail felony.

3           (c) An offense under this section is a felony of the third  
4 degree if the actor commits the offense:

5                   (1) for pecuniary benefit; or

6                   (2) in a manner that creates a substantial likelihood  
7 that the transported individual will suffer serious bodily injury  
8 or death.

9           (d) It is an affirmative defense to prosecution under this  
10 section that the actor is related to the transported individual  
11 within the second degree of consanguinity or, at the time of the  
12 offense, within the second degree of affinity.

13           (e) If conduct constituting an offense under this section  
14 also constitutes an offense under another section of this code, the  
15 actor may be prosecuted under either section or under both  
16 sections.

17           SECTION 3. Section 71.02(a), Penal Code, as amended by  
18 Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554),  
19 Acts of the 81st Legislature, Regular Session, 2009, is reenacted  
20 and amended to read as follows:

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

26                   (1) murder, capital murder, arson, aggravated  
27 robbery, robbery, burglary, theft, aggravated kidnapping,

1 kidnapping, aggravated assault, aggravated sexual assault, sexual  
2 assault, forgery, deadly conduct, assault punishable as a Class A  
3 misdemeanor, burglary of a motor vehicle, or unauthorized use of a  
4 motor vehicle;

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

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

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

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

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

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

21 (8) any felony offense under Chapter 32;

22 (9) any offense under Chapter 36;

23 (10) any offense under Chapter 34 or 35;

24 (11) any offense under Section 37.11(a);

25 (12) any offense under Chapter 20A;

26 (13) any offense under Section 37.10; [~~or~~]

27 (14) any offense under Section 38.06, 38.07, 38.09, or

1 38.11;

2 (15) [~~(14)~~] any offense under Section 42.10;

3 (16) [~~(14)~~] any offense under Section 46.06(a)(1) or  
4 46.14; or

5 (17) any offense under Section 20.05.

6 SECTION 4. Article 13.12, Code of Criminal Procedure, is  
7 amended to read as follows:

8 Art. 13.12. FALSE IMPRISONMENT, [AND] KIDNAPPING, AND  
9 SMUGGLING OF PERSONS. Venue for false imprisonment, [and]  
10 kidnapping, and smuggling of persons is in either the county in  
11 which the offense was committed, or in any county through, into, or  
12 out of which the person falsely imprisoned, [or] kidnapped, or  
13 transported may have been taken.

14 SECTION 5. Article 59.01(2), Code of Criminal Procedure, as  
15 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357  
16 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is  
17 reenacted and amended to read as follows:

18 (2) "Contraband" means property of any nature,  
19 including real, personal, tangible, or intangible, that is:

20 (A) used in the commission of:

21 (i) any first or second degree felony under  
22 the Penal Code;

23 (ii) any felony under Section 15.031(b),  
24 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,  
25 31, 32, 33, 33A, or 35, Penal Code;

26 (iii) any felony under The Securities Act  
27 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

1 (iv) any offense under Chapter 49, Penal  
2 Code, that is punishable as a felony of the third degree or state  
3 jail felony, if the defendant has been previously convicted three  
4 times of an offense under that chapter;

5 (B) used or intended to be used in the commission  
6 of:

7 (i) any felony under Chapter 481, Health  
8 and Safety Code (Texas Controlled Substances Act);

9 (ii) any felony under Chapter 483, Health  
10 and Safety Code;

11 (iii) a felony under Chapter 153, Finance  
12 Code;

13 (iv) any felony under Chapter 34, Penal  
14 Code;

15 (v) a Class A misdemeanor under Subchapter  
16 B, Chapter 365, Health and Safety Code, if the defendant has been  
17 previously convicted twice of an offense under that subchapter;

18 (vi) any felony under Chapter 152, Finance  
19 Code;

20 (vii) any felony under Chapter 32, Human  
21 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that  
22 involves the state Medicaid program;

23 (viii) a Class B misdemeanor under Chapter  
24 522, Business & Commerce Code;

25 (ix) a Class A misdemeanor under Section  
26 306.051, Business & Commerce Code; [~~or~~]

27 (x) any offense under Section 42.10, Penal

1 Code;

2 (xi) [~~(x)~~] any offense under Section  
3 46.06(a)(1) or 46.14, Penal Code;

4 (xii) [~~(x)~~] any offense under Chapter 71,  
5 Penal Code; or

6 (xiii) any offense under Section 20.05,  
7 Penal Code;

8 (C) the proceeds gained from the commission of a  
9 felony listed in Paragraph (A) or (B) of this subdivision, a  
10 misdemeanor listed in Paragraph (B)(viii), [~~(x)~~], (x), (xi), or (xii)  
11 of this subdivision, or a crime of violence;

12 (D) acquired with proceeds gained from the  
13 commission of a felony listed in Paragraph (A) or (B) of this  
14 subdivision, a misdemeanor listed in Paragraph (B)(viii), [~~(x)~~], (x),  
15 (xi), or (xii) of this subdivision, or a crime of violence; or

16 (E) used to facilitate or intended to be used to  
17 facilitate the commission of a felony under Section 15.031 or  
18 43.25, Penal Code.

19 SECTION 6. The changes in law made by this Act in amending  
20 Sections 20.05 and 71.02, Penal Code, apply only to an offense  
21 committed on or after the effective date of this Act. An offense  
22 committed before the effective date of this Act is covered by the  
23 law in effect when the offense was committed, and the former law is  
24 continued in effect for that purpose. For purposes of this section,  
25 an offense was committed before the effective date of this Act if  
26 any element of the offense occurred before that date.

27 SECTION 7. The change in law made by this Act in amending

1 Article 59.01(2), Code of Criminal Procedure, applies only to the  
2 forfeiture of property in relation to an offense committed on or  
3 after the effective date of this Act. Forfeiture of property in  
4 relation to an offense committed before the effective date of this  
5 Act is governed by the law in effect when the offense was committed,  
6 and the former law is continued in effect for that purpose. For  
7 purposes of this section, an offense was committed before the  
8 effective date of this Act if any element of the offense occurred  
9 before that date.

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

14 SECTION 9. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 260 was passed by the House on April 21, 2011, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 260 on May 23, 2011, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 260 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor